CONSULTATION PAPER

ON REVIEW OF THE CODE ON CORPORATE GOVERNANCE PRACTICES AND ASSOCIATED LISTING RULES

December 2010

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

CONTENTS

Page No.

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.

HOW TO RESPOND TO THIS CONSULTATION PAPER

The Stock Exchange of Hong Kong Limited (the "**Exchange**"), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited ("**HKEx**"), invites written comments on the changes proposed in this Paper no later than 18 March 2011. Responses should, if possible, be made by one of the following methods:

By mail or hand delivery to

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

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

By fax to (852) 2524-0149

By e-mail to **response@hkex.com.hk**

Please mark in the subject line:
Re: CP on CG Review

The Exchange's submission enquiry number is (852) 2840-3844.

The Exchange invites views on the proposed changes, supported, where appropriate, with reasons. Respondents are reminded that the Exchange will publish responses on a named basis in the intended consultation conclusions, unless you request otherwise.

The Exchange's policy on handling personal data is set out in **Appendix III** of this paper.

Next Steps

The Exchange will carefully consider all the responses received, and if appropriate, develop (or further progress) rule amendments to implement the final agreed conclusions. As usual the Exchange will develop the consultation conclusions and work with the Securities and Futures Commission for any relevant rule amendments.

CHAPTER 1: INTRODUCTION

Purpose of the Paper

21. This consultation paper seeks comments on the proposed amendments to the Code, Rules, and the Corporate Governance Report.

22. The Code was introduced in January 2005. Since then, we have conducted regular reviews to monitor compliance by issuers with the Code. The last review published in September 2010, as well as the review of 2007 annual reports, found that 39% of issuers complied with all CPs. According to those two reviews, virtually all issuers complied with 41 or more of the 45 CPs, that is 99% for 2009 and 98% for 2007. Approximately half of the Large Cap[2] issuers fully complied with all CPs in the reviews: 44% in 2007, rising to 52% in 2009. However, the latest review found that a smaller percentage of Medium Cap[3] and Small Cap[4] issuers fully complied with all CPs compared with the 2007 review.

23. Chapter 2 of this paper discusses substantive amendments. The Chapter is divided into three parts: Part I and Part II discuss issues and proposals relating to directors and shareholders respectively. Part III discusses issues and proposals relating to the company secretary.

24. Chapter 3 discusses non-substantive amendments, Appendix 23 and other minor Rule and Code amendments. We also propose to merge Appendix 23 on the Corporate Governance Report with the Code as they are closely linked. Many of the proposed amendments to the Code will also result in changes to Appendix 23. We do not propose to change the mandatory nature of disclosure requirements of Appendix 23.

25. This consultation paper does not propose amendments to the internal control part of the Code. This will be the subject of a separate consultation exercise in due course.

26. We set out in Appendix I a draft of the proposed Rule amendments and in Appendix II the proposed amendments to the Code and Corporate Governance Report.

27. While this consultation paper focuses on the Main Board Listing Rules, it applies equally to the GEM Listing Rules. We will make equivalent amendments to the GEM Listing Rules.

28. A consultation conclusions paper will be published after the end of the consultation period. We will carefully consider all public comments received. Revisions reflecting comments will be incorporated into the draft amendments of the Rules and the Code.

---

[2] A "Large Cap" is an issuer with a market capitalisation of over $1,000 million as defined in the "Analysis of Corporate Governance Practices Disclosure in 2009 Annual Reports", published by HKEx in September 2010.

[3] A "Medium Cap" is an issuer with a market capitalisation of more than 400 million but less than $1,000 million.

[4] A "Small Cap" is an issuer with market capitalisation of less than $400 million.

Plain Writing Amendments

29. We have taken the opportunity to re-draft, in plainer language, the Code and Rules affected by the policy proposals. These amendments do not change existing policy. Only the amendments that change existing policy are described in full in this paper.

Consultation Question

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? Please give reasons for your views.*

CHAPTER 2: PROPOSED SUBSTANTIVE AMENDMENTS

PART I: DIRECTORS

1. Directors' Duties and Time Commitments

Current Requirements

30. Rule 3.08 states that an issuer's board is collectively responsible for its management and operations. The Exchange expects the directors, both collectively and individually, to meet fiduciary duties and duties of skill, care and diligence to a standard at least equal to those of Hong Kong law.

31. Under the Rules, every director must in the performance of his duties:

(a) act honestly and in good faith in the interests of the company as a whole;

(b) act for proper purpose;

(c) be answerable to the issuer for the application or misapplication of its assets; and

(d) avoid conflicts of interest and to disclose fully his interests in contracts with the issuer.

32. CP A.5.3 states that every director should ensure that he can give sufficient time and attention to the issuer's affairs and should not accept an appointment if he cannot.

33. RBP D.1.4 states that issuers should have formal letters of appointment for directors setting out the key terms and conditions of their appointments.

34. RBP A.5.6 encourages a director to disclose to the issuer, at the time of his appointment, the number and nature of offices held in public companies or organisations and other significant commitments. The board can decide how often a director should make this disclosure.

35. There is no Code recommendation for a review of directors' time commitments.

Issues

36. We note market concerns that some directors, particularly INEDs, may have taken on too many directorships. This may compromise their ability to devote sufficient time and energy to their duties. In some cases, directors' failure to perform their duties may be due to a lack of understanding of what is expected of them.

37. When considering IPO applications, we frequently come across situations where an applicant's director, often an INED, may already be sitting on multiple boards as well as having other professional commitments. The concerns are that some of these

directors may not be able to commit sufficient time to the issuers' business. In a number of disciplinary cases, an obvious lack of attention given by INEDs to their duties was a contributing factor to the non-compliance with Rules by the issuer.

38. These concerns have prompted calls to impose a limit on the number of directorships, particularly independent non-executive directorships, an individual may hold.

39. However, introducing a Rule that limits the number of INED positions a person can hold may unfairly penalise competent, diligent INEDs who devote sufficient time to their multiple directorships. Also, as at 31 August 2010, only 1.4% (45 out of 3,323 INEDs) hold more than 5 INED positions and 0.8% (72 out of 9,323 directors) hold more than 5 directorship positions (including INED, NED and ED).

40. A director should devote necessary time and attention to his duties. He should limit the number of his other professional commitments to ensure that he has sufficient time and energy to deal with the issuer's affairs. However, CP A.5.3 could be more specific.

41. The letters of appointment for NEDs could also set out the time commitment expected of them. This would bolster the other measures described in this section to ensure NEDs commit sufficient time to their duties to issuers.

42. RBP A.5.6 recommends a director disclose to the board his other significant commitments at the time of his appointment. However, the board should also be informed of any change to these commitments after appointment so it can decide whether the director can continue to devote sufficient time to his duties.

43. A nomination committee could regularly review whether directors are meeting their responsibilities (proposal in paragraph 53(a). Views expressed during soft consultation on this proposal were that it will be difficult to predict the time required for each director on the issuer's business because their areas of competence may vary. For the same matter, one director may spend one hour whilst another may spend considerably more. It is also difficult to assess whether a director is spending adequate time on the issuer's business. However, there are views that the nomination committee should not be burdened with a detailed audit of the directors' time spent on the issuer's business, but should take a closer look at the time commitments made by the directors and whether they are meeting those commitments. For instance, if a director rarely attends any board or board committee meetings or is unprepared for most of these meetings, it will call into question whether he is spending sufficient time on the issuer's business.

Requirements in other jurisdictions

Directors' duties

44. Certain common law jurisdictions, including the UK, Australia and Singapore have codified some of the fiduciary duties and duties of care and skill in their statute law. Hong Kong is still consulting on whether to do so[5]. Even if the new law is passed, its

[5] See FSTB's "Consultation Conclusions on First Phase Consultation of the draft Companies Bill" (August 2010). The proposal to introduce a statutory statement on directors' duty of care, skill and diligence in the Companies Bill is expected to be presented to the Legislative Council before the end of 2010.

impact on most issuers will not be significant given the small percentage of our issuers incorporated in Hong Kong. The Rules apply to all issuers, no matter where they are incorporated.

Time commitments

45. The UK Corporate Governance Code ("**UK Code**") states that for the appointment of a chairman, the nomination committee should prepare a job specification, including an assessment of the time commitment expected[6].

46. The UK Code also states that NEDs should undertake that they will have sufficient time to meet the commitments expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved and the board should be informed of subsequent changes[7]. The UK Code also states that the letter of appointment should set out the expected time commitment and that the terms and conditions of appointment of NEDs should be made available for inspection.

47. The European Commission's Recommendation[8] states that: "*Each director should devote to his duties the necessary time and attention, and should undertake to limit the number of his other professional commitments. … Where the appointment of a director is proposed, his other significant professional commitments should be disclosed. The board should be informed of subsequent changes. Every year, the board should collect data on such commitments, and make the information available in its annual report.*"

48. In the Mainland, the "Guidelines for Introducing Independent Directors to the Board of Directors of Listed Companies" issued by the CSRC states that "*In principle, independent directors can only hold concurrently the post of independent directors in five listed companies at maximum. They shall have enough time and energy to perform the duties of the independent directors effectively*."

Consultation Proposals

Directors' duties

49. To improve directors' understanding of their duties, we propose to:

    (a) expand Rule 3.08 to state that directors must take an active interest in the issuer's affairs, obtain a general understanding of its business and follow up anything untoward that comes to their attention; and

    (b) provide guidance to directors in a Note to the Rule.

50. The Note to the Rule will refer to the Companies Registry's "*A Guide on Directors' Duties*" and Hong Kong Institute of Directors' ("**HKIOD**") "*Guidelines for Directors*" and the "*Guide for Independent Non-executive Directors*". The first sets

[6] UK Code B.3.1.
[7] UK Code B.3.2.
[8] Article 12 of the "Commission Recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board 2005/162/EC".

out 11 principles on the general duties of directors. The two guides produced by HKIOD explain how directors can meet their duties in practice.

51. Neither the Rules nor the guidance referred to are intended to be exhaustive. Directors should seek appropriate advice if they are unclear on any aspect of their duties and responsibilities.

Time commitments

52. We propose adding two new paragraphs to the duties under the nomination committee's terms of reference under RBP A.4.5 (upgraded and re-numbered CP A.5.2).

53. These proposed new duties (CPs A.5.2(e) and (f)) recommend that the nomination committee:

(a) regularly review the time required from a director to perform his responsibilities to the issuer, and whether he is spending sufficient time as required; and

(b) review the non-executive directors' annual confirmations that they have spent sufficient time on the issuer's business made under CP A.5.3 (re-numbered CP A.6.3).

54. We also propose to amend Appendix 23 (re-numbered paragraph L(d)(ii) of Appendix 14) to require the nomination committee to disclose in the issuer's corporate governance report that it has received and reviewed the non-executive directors' annual confirmation made under re-numbered CP A.6.3.

55. We propose to expand CP A.5.3 (re-numbered CP A.6.3) recommending a director should limit his other professional commitments and should acknowledge to the issuer that he will have sufficient time to meet his obligations to the issuer. In addition, an NED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business.

56. We propose to upgrade RBP D.1.4 to a CP with revised wording stating that letters of appointment for non-executive directors should set out the time commitment expected of them.

57. We propose to upgrade RBP A.5.6 to a CP (re-numbered CP A.6.6) and amend it to encourage directors to inform the issuer's board of any change to their significant commitments. We propose to amend the CP so that this disclosure is made "in a timely manner for any change".

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

Consultation Questions

Question 2: *Do you agree with our proposed change to Rule 3.08 to clarify the responsibilities the Exchange expects of directors? 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? Please give reasons for your views.*

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? Please give reasons for your views.*

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'[9] annual confirmation that they have spent sufficient time on the issuer's business ? Please give reasons for your views.*

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? Please give reasons for your views.*

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? Please give reasons for your views.*

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? Please give reasons for your views.*

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? Please give reasons for your views.*

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? Please give reasons for your views.*

Question 11: *Do you consider that there should be a limit on the number of INED positions an individual may hold? Please give reasons for your views.*

Question 12: *If your answer to Question 11 is "yes", what should be the maximum*

[9] For the avoidance of doubt, the term NEDs includes both NEDs and INEDs.

number? Please give reasons for your views.

Question 13: If your answer to Question 11 is "yes", do you think that the limitation should be a Rule or a CP? Please give reasons for your views.

2. Directors' Training and Independent Non-executive Directors

Current Requirements

59. RBP A.5.5 states that all directors should participate in continuous professional development arranged and funded by the issuer.

60. RBP A.3.2 recommends that at least one-third of an issuer's board should be INEDs.

61. RBP A.4.3 states that serving on an issuer's board for more than nine years could be relevant to the independence of an INED. Any further appointment of the INED should be subject to a separate resolution to be approved by shareholders.

62. Rule 3.13 states that an INED must inform the Exchange as soon as practicable of any change of circumstances that may affect his independence. He must also provide an issuer with an annual confirmation of his independence. The issuer must disclose in its annual report whether it has received this confirmation and state whether it still considers the INED to be independent.

63. RBP A.4.8 encourages the board to include in a circular nominating a person for election as an INED, an explanation on why the person should be elected and why the issuer considers him independent.

Issues

Directors' training

64. Directors need to keep up-to-date on new developments in the law and regulations to ensure that an issuer complies with them. These regulations include accounting standards, Rules, the Code and Listing Decisions. Training enables directors to develop and refresh their knowledge and skills so their contributions to the board are informed and relevant. However, currently an issuer is not required to disclose whether directors receive training.

65. A frequent reason given by directors at Exchange disciplinary hearings for non-compliance with the Rules is that they did not understand or were not aware of them. In disciplinary decisions the Exchange often requires directors to attend remedial training in compliance and corporate governance related topics.

66. However, for the majority of the directors who are experienced, well informed and for those who frequently travel or are based overseas, it may be impractical for them to attend classroom training. We believe that a range of training methods should be accepted. For example, we envisage attending and/or giving speeches at conferences, preparing and giving seminars, article writing, reading relevant books and articles, and briefings by in-house counsel and a company secretary relevant to the directors'

duties and responsibilities and should count towards training hours under this proposal.

67. We note that HKIOD requires 10 hours of training for its members. A director who meets the HKIOD requirement would also comply with the proposed CP. So, the proposed CP would not place an onerous burden on directors who are HKIOD members.

INEDs to form one-third of board

68. INEDs perform many important duties under the Rules and the Code. They participate in several board committees such as the nomination, remuneration and audit committees. They also represent shareholders as a whole where other directors may have a conflict of interests. For example, they must form an independent board committee to advise shareholders on whether the terms of a connected transaction are fair and reasonable, in the interests of the issuer and its shareholders as a whole and to advise shareholders on how to vote.

69. This review proposes to increase INEDs' participation in corporate governance matters. For instance, we propose that INEDs take more active roles in the remuneration committee (see paragraphs 113 to 115), nomination committee (see paragraphs 131 to 134) and corporate governance committee (see paragraphs 141 to 146). So, it may be necessary to increase their number on the board.

70. As at 31 August 2010, 1,071 (approximately 79%) of all issuers have INEDs that constitute one-third of their boards.

71. To comply with the proposed Rule that at least one-third of the board must be INEDs, some issuers will have to appoint more. This may be costly and some may argue that this standard should not apply equally to both large and small issuers.

72. There are comments that the pool of good INEDs in Hong Kong is not large enough. Others comment that Hong Kong has a large pool of professionals such as retired lawyers and accountants who can take up the role but issuers prefer to appoint individuals who they consider friendly to them.

73. If issuers are required to have higher numbers of INEDs on their boards, existing INEDs may be asked to become INEDs on a greater number of boards. This means that these INEDs may have less time to devote to their duties at each issuer. However, some hold the view that Hong Kong has long been an international financial centre. It should therefore have a sufficient number of persons whose knowledge and expertise is adequate for the INED role.

74. Moreover, upgrading RBP A.3.2 to a Rule will bring our requirement closer to international standards.

An INED who has served nine years

75. Code Principle A.3 says that the board should have a strong independent element. If an INED serves on a board for a number of years there are views that he may become too close to an issuer's management and may lose his objectivity and independence.

76. There is no empirical evidence of a direct link between a director's length of service and independence. An INED's familiarity with an issuer's operations and practices may be an asset to the issuer rather than a liability. This may place him in a better position to contribute independent views. Equally, it is possible for an INED who has served on a board only a short time not to be independent. Independence may be more of a "mind-set" and not influenced by the number of years spent on the board.

77. It may be best for shareholders to have the opportunity to consider the independence of a director who has served on a board for many years by voting on a resolution to extend the INED's service.

Circular nominating INED for election

78. The role of an INED is to protect the interests of shareholders as a whole, especially where a director or substantial shareholder has a conflict of interest (e.g. for connected transactions). So, it is important that shareholders can make an informed decision on the appointment of the nominated INED.

Requirements in other jurisdictions

79. The Corporate Governance Standards of the New York Stock Exchange Listed Company Manual ("**NYSE CG Standards**") require issuers to have a majority of independent directors. The Australian Code requires issuers to "comply or explain" whether INEDs comprise a majority of their board[10]. The UK Code requires issuers to "comply or explain" on whether at least half of their board (excluding the chairman) are INEDs (except in the case of smaller companies)[11]. In the Mainland[12] at least one-third of an issuer's board must be independent directors, at least one of whom must be an accounting professional. The Singapore Code contains a "comply or explain" provision that one-third of an issuer's board should be INEDs[13].

80. On an independent director's length of service, the UK Code[14] states that this is a factor that can affect a director's independence. The board is required to state in its annual report its reasons for deciding a director is independent, even if circumstances exist that may compromise that independence. One of the circumstances mentioned is if a director has served for more than nine years on an issuer's board. The UK Code[15] also states that all NEDs who have served longer than nine years should be subject to annual re-election.

81. The Australian Code[16] states that issuers should disclose to shareholders the length of service of directors who are up for re-election to allow them to make informed decisions on their independence when voting.

[10] Recommendation 2.1 of Corporate Governance Principles and Recommendation 2nd edition.
[11] Code B.1.2.
[12] Section 1 of the CSRC's "Guidelines for Establishing the Independent Directors System for Listed Companies",.
[13] Guideline 2.1 of Code on Corporate Governance 2005.
[14] Code B.1.1.
[15] Code B.7.1.
[16] Commentary to Recommendation 2.4.

82. The Mainland [17] recommends that INEDs do not serve on the same issuer's board for more than six years.

Consultation Proposals

Directors' training

83. We propose to upgrade the recommendation for directors' continuous professional development (RBP A.5.5) to a CP (re-numbered CP A.6.5). We also propose to amend it to state that:

(a) the training should place "an appropriate emphasis on the roles, functions and duties of an Exchange listed company director"; and

(b) directors should receive at least eight hours of training in each financial year.

84. If the proposal is adopted, we will publish guidance on how directors can receive at least eight hours of training a year.

85. We also propose that the issuer's company secretary should keep a record of each director's training for each financial year (see paragraph 368).

INEDs to form one-third of board and transitional period

86. We propose to upgrade the recommendation that INEDs comprise at least one-third of the board from RBP A.3.2 to a Rule (re-numbered Rule 3.10A).

87. We understand that the appointment process for additional INEDs may take time for approximately 21% of issuers that do not comply with the proposed Rule. So, we propose to provide a transitional period for issuers. Issuers would be required to comply with this proposed Rule by 31 December 2012.

An INED who has served nine years

88. We propose to upgrade the recommendation that shareholders vote on a separate resolution to retain a director who has served on a board for more than nine years from RBP A.4.3 to a CP (re-numbered CP A.4.3).

Circular nominating INED for election

89. We also propose to upgrade RBP A.4.8 to a CP (re-numbered CP A.5.5). The current RBP A.4.8 recommends the board include in a circular nominating a person for election as an INED, an explanation why the person should be elected and why the issuer considers him independent.

Consultation Questions

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)? Please give reasons for your views.

[17] Section 4(4) of the CSRC's "Notice on Issuance of Guidelines for Introducing Independent Directors to the Board of Directors of Listed Companies", published on 16 August 2001.

Question 15: Do you agree that the minimum number of hours of directors training should be eight? Please give reasons for your views.

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)?

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)? Please give reasons for your views.

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 above? Please give reasons for your views.

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)? Please give reasons for your views.

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)? Please give reasons for your views.

3. Board Committees

A. Remuneration Committee

Current Requirements

90. The Code Principle B.1 states that the level of remuneration should be sufficient to attract and retain the directors needed for the successful operation of an issuer. However, issuers should avoid paying directors more than is necessary. Also, no director should be involved in deciding his own remuneration.

91. CP B.1.1 states that issuers should establish a remuneration committee consisting of a majority of INEDs, with specified terms of reference.

92. CP B.1.2 states that the committee should have access to professional advice, if necessary. CP B.1.3 sets out the items that should be included in the committee's terms of reference. This includes a statement that the remuneration committee should: "*review and approve performance-based remuneration by reference to corporate goals and objectives resolved by the board from time to time*" (CP B.1.3(c)).

93. CP B.1.3(b) states that the remuneration committee should make recommendations on INED's and NED's remuneration to the board.

94. RBP B.1.8 states that where the board approves remuneration or compensation which the remuneration committee has previously resolved not to approve, the board must disclose the reasons in its next annual report.

Issues

Independence of the remuneration committee

95. To help ensure that no director is involved in deciding his own remuneration, it is important that a remuneration committee provides independent advice to the board on executive director and senior management remuneration. This is why the Code states that the remuneration committee membership should consist of a majority of INEDs. However, the chairman of the committee has a powerful leadership role. For example, he must ensure that committee members' views as a whole are reflected in its decisions. The Code does not require the remuneration committee chairman to be an INED. Having an executive director as the chairman of the committee may weaken its independence.

96. Our review of issuers' corporate governance practices[18] in 2009 found that 98.5% of issuers have established a remuneration committee, consisting of a majority of INEDs.

97. We received feedback during soft consultation that although the requirement for the chairman of the remuneration committee to be an INED is common among overseas markets, it may not be necessary in our market. In Asia, most issuers will have a controlling shareholder whose interest is the same as the minority shareholders regarding remuneration packages. All shareholders prefer that these packages reflect management performance without paying more than necessary. So, there were views that an NED independent from the management but not necessarily independent from the controlling shareholder could still be an appropriate person to chair the remuneration committee. However, this argument is not convincing if the controlling shareholder is also part of the management.

Remuneration committee models

98. We are aware of two models for the operation of a remuneration committee, both of which usually stipulate that the remuneration committee is responsible for formulating remuneration policy for the approval of the board.

Model A

99. In Model A, a remuneration committee will have the authority delegated by the board to determine the specific remuneration packages of executive directors and senior management.

Model B

100. In Model B, the remuneration committee will review the proposals made by the management on the remuneration of executive directors and senior management, and make recommendations to the board. The board will have the final authority to approve the recommendations made by the committee. The board may ask the remuneration committee to reconsider its recommendations.

[18] Analysis of Corporate Governance Practices Disclosure in 2009 Annual Report, published by HKEx in September 2010.

101. The CP on the remuneration committee's terms of reference (CP B.1.3 re-numbered CP B.1.2) does not accommodate Model B.

102. During soft consultation we received comments that Model B may be flawed as it is possible for a board composed by a majority of executive directors to block proposals made by the remuneration committee relating to their remuneration. However, we also received comments that some issuers currently adopt Model B which works well for their situation.

Disclosure of disagreements between the remuneration committee and the board

103. If a board overrules the decision of a remuneration committee, it may be considered that an issuer should inform shareholders of the reasons. This is the rationale behind RBP B.1.8. However, we received comments that the proposed CP may discourage an INED from opposing the will of the majority, unless he is prepared to resign from the board.

104. If the proper procedure for deciding remuneration has been followed, there may be no need to publish details of disagreements arising during negotiations between the remuneration committee and the whole board. An agreement may eventually be reached. So, disclosure may not be necessary as the different views were simply part of the normal operation of the board and the remuneration committee. If we require disclosure of the disagreements, we propose that it should be part of the corporate governance report and not in the annual report.

Independent professional advice

105. It is not clear that the professional advice that an issuer makes available to the remuneration committee should be "independent". This is inconsistent with other parts of the Code. For example CP A.1.7 (re-numbered CP A.1.6) states that directors should have access to "independent" professional advice to help them perform their duties.

"Performance-based"

106. The Code's statement that remuneration should be "performance-based" (B.1.3(c)) is inconsistent with the rest of the Code, because it does not state that an issuer should evaluate the board's performance.

Requirements in other jurisdictions

Establishment and composition of the remuneration committee

107. Following the recent financial crisis, the oversight of management's remuneration has increased in prominence. Governments around the world are tightening laws and regulations on this subject.[19]

[19] See the US's Restoring Financial Stability Act 2010, UK's Department of Business, Innovation and Skills' consultation paper on directors' remuneration report published in August 2010 and Deloitte's report on Executive Directors' Remuneration published in September 2010.

108. In Australia, as from 1 July 2011, ASX top 300 companies must have a remuneration committee comprised solely of NEDs. These companies currently represent about 90% of the aggregate market capitalisation of companies listed for quotation on ASX. A newly proposed Recommendation 8.2 to the Australian Code[20], which will apply to companies other than the ASX top 300 companies, provides that the remuneration committee should consist of a majority of independent directors, be chaired by an independent director and have at least three members.

109. The UK Code[21] states that an issuer's board should establish a remuneration committee consisting of at least three, or for smaller companies two, INEDs. Its terms of reference should be made available explaining its role and the authority delegated to it by the board.

110. The Singapore Code[22] states that an issuer's board should set up a remuneration committee of entirely non-executive directors, the majority of whom, including the chairman, should be independent.

Remuneration committee models

111. The UK Code[23] states that the remuneration committee should have delegated responsibility for setting remuneration for all EDs and the chairman. This is similar to Model A. With regard to senior management, the UK Code states that the committee should recommend and monitor their remuneration.

112. However, the Australian Code[24], the Singapore Code[25] and the Mainland's "Code of Corporate Governance for Listed Companies" issued by CSRC and the State Economic and Trade Commission on 7 January 2002 ("**PRC Code**")[26] adopt a model similar to Model B.

Consultation Proposals

113. We propose to introduce Rule 3.25 which states that issuers must establish a remuneration committee with a majority of INEDs as members and chaired by an INED. Consequently, CP B.1.1 will be deleted.

114. We propose to move the requirement for a remuneration committee to have written terms of reference from the Code (CP B.1.1) to Rule 3.26.

115. We also propose adding new Rule 3.27 stating that if an issuer fails to set up a remuneration committee (or the other requirements in Rules 3.25, 3.26 and 3.27) it must immediately publish an announcement containing the relevant details and reasons. Issuers must then meet the requirement(s) within three months.

116. We propose to amend CP B.1.2 (re-numbered CP B.1.1) to state that the remuneration committee should have access to professional advice that is "independent".

---

[20] Intended to be implemented after 1 January 2011.
[21] Code D.2.1.
[22] Guideline 7.1.
[23] Code D.2.2.
[24] Commentary to Recommendation 8.1.
[25] Guideline 7.2.
[26] Article 58 of the PRC Code.

117. We propose to revise CP B.1.3 (re-numbered CP B.1.2) to accommodate both Model A and Model B. An issuer should state in the corporate governance report which model it has adopted. We seek market views on whether RBP B.1.8 should be retained and upgraded to a CP (re-numbered CP B.1.6). This provision will only apply to Model B. Under the new CP B.1.6, if an issuer adopts Model B, it would be required to publish in its corporate governance report the reasons why the board approves remuneration with which the remuneration committee disagrees. If an issuer does not comply with this requirement, it would have to disclose why it did not in the corporate governance report.

118. We also propose to amend CP B.1.3(c) (re-numbered CP B.1.2(b)) to remove the term "performance-based". Paragraph 180 sets out our proposal to add board evaluation of performance as an RBP. It would be inconsistent for an issuer to "comply or explain" against a performance-based remuneration CP if board evaluation is only an RBP. Our proposed CP B.1.2(b) states that management's remuneration proposals should be reviewed by the remuneration committee "*with reference to the board's corporate goals and objectives*".

Consultation Questions

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)? Please give reasons for your views.

Question 22: Do you agree with our proposal that the remuneration committee must be chaired by an INED? 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)? 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? 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? Please give reasons for your views.

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)? Please give reasons for your views.

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? Please give reasons for your views.

Question 28: 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)? If your answer is "yes", do you agree that RBP B.1.8 should be revised (see Appendix II) and upgraded to a CP (re-numbered CP B.1.6). 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? Please give reasons for your views.

B. Nomination Committee

Current Requirements

119. RBP A.4.4 recommends an issuer establish a nomination committee with a majority of INEDs as members.

120. RBP A.4.5 recommends that the terms of reference for a nomination committee include the following duties:

(a) review the structure, size and composition (including the skills, knowledge and experience) of the board on a regular basis and make recommendations to the board on any proposed changes;

(b) identify individuals suitably qualified to become board members and select or make recommendations to the board on the selection of, individuals nominated for directorships;

(c) assess the independence of independent non-executive directors; and

(d) make recommendations to the board on relevant matters relating to the appointment or re-appointment of directors and succession planning for directors in particular the chairman and the chief executive officer.

121. RBP A.4.6 recommends the nomination committee should make its terms of reference available on request and on the issuer's website.

122. RBP A.4.7 also recommends issuers to provide the nomination committee with sufficient resources.

Issues

123. The principal responsibility of the nomination committee is to review the size, structure and composition of the board and identify and recommend appropriate candidates for election or re-election to board. Therefore the work of the committee has a tremendous influence on the future success of the board and the issuer.

124. Our 2009 review of issuers' compliance with the Code found that 63% of issuers did not have a nomination committee. We consider establishing a nomination committee to be a good corporate governance practice. An independent committee is best placed to perform the duties set out in paragraph 120.

125. The Code recommends that the membership of the nomination committee comprise of a majority of INEDs, so it can act independently. Although the chairman of the committee has a powerful leadership role, the Code does not require him to be an INED. This may weaken its independence.

126. The nomination committee's duties set out in the Code are internationally recognised as important to improving the independence and quality of the board. However, these are currently only RBPs in the Code. So, an issuer is not required to disclose whether it has followed these recommendations.

127. Further, the Code currently does not state how regularly the nomination committee should review the size, structure and composition of the board. The issuer can perform this review infrequently and still comply with the recommendation.

128. There is currently no central repository for all issuers' nomination committee terms of reference. So, an investor in multiple issuers has to visit the website of each one in order to access this information. Also, the information may not be readily accessible on the issuer's website.

129. A nomination committee may be able to perform its duties more effectively with the help of independent professional advice. For example, it could use a recruitment firm to fill a board position from a larger pool of candidates. However, there is currently no provision for this in the Code.

Requirements in other jurisdictions

130. It is a code provision or recommendation (i.e. subject to "comply or explain") in the UK, Australia and Singapore for listed companies to set up nomination committees, with the majority of the committee as well as the chairman being independent directors. The US's NYSE Manual requires listed companies to set up a nomination committee composing entirely independent directors[27].

Consultation Proposals

131. We propose to upgrade the establishment of a nomination committee (RBP A.4.4) to a CP (re-numbered CP A.5.1) and revise it to state that the nomination committee should be chaired by an INED while keeping the recommendation that a majority of its members should be INEDs.

132. We propose to upgrade RBP A.4.5 (re-numbered CP A.5.2) on the terms of reference for a nomination committee to a CP. We also propose amending it to state that the nomination committee should review the structure, size and composition of the board at least once a year and that the recommendations from these reviews should complement the issuer's corporate strategy.

133. We propose upgrading to a CP the recommendation for a nomination committee's terms of reference to be made available (RBP A.4.6) and amending it to state these should be available on the HKEx website as well as the issuer's website. This will provide a central repository of this information.

[27] NYSE Manual Section 303A.04(a).

134. We propose upgrading, the recommendation for the nomination committee to be given sufficient resources (RBP A.4.7) to a CP and clarify that the nomination committee should be able to seek independent professional advice at the issuer's expense.

Consultation Questions

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? 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? 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? 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 review of the structure, size and composition of the board should be performed at least once a year? 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? Please give reasons for your views.

Question 35: Do you agree that RBP A.4.6 (availability of nomination committee's terms of reference) should be upgraded to a CP? 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? 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? 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? Please give reasons for your views.

C. Corporate Governance Committee

Current Requirements

135. There is no requirement in the Rules or the Code for a corporate governance committee. RBP A.2.5 states that an issuer's chairman should take responsibility for ensuring that an issuer establishes good corporate governance practices and procedures.

Issues

136. One of our purposes in reviewing the corporate governance framework is to bring additional focus to good corporate governance. We have found in disciplinary hearings that some, particularly smaller, issuers do not have a body or committee that is responsible for corporate governance compliance.

137. An issuer should have a committee that develops and regularly reviews its compliance with legal, regulatory and corporate governance standards and makes recommendations to the board. A committee dedicated to this role helps ensure that an issuer devotes more attention, time and resources to compliance. This is important because legal, regulatory and corporate governance standards:

(a) change frequently as they develop, follow new business practices or respond to significant market failures; and

(b) are not "one size fits all" - issuers need to tailor their compliance with corporate governance standards to fit their own circumstances.

138. We recognise that having another committee may increase the work burden of directors. To alleviate this concern, we consider the duties of this committee can be carried out by existing committees.

139. However, we have received comments that good corporate governance is a matter for the whole board. A board should not be able to abdicate its responsibility for corporate governance by delegating it to a committee.

Requirements in other jurisdictions

140. The corporate governance codes in the UK, Australia, Singapore and the Mainland do not have provisions that issuers should establish a corporate governance committee. However, in the US, the NYSE CG Standards states that issuers must have a nominating/corporate governance committee comprised entirely of independent directors[28]. The committee must have a written charter to address its purpose and responsibilities which should include developing and recommending to the board corporate governance guidelines applicable to the issuer[29].

[28] Section 303A.04(a).
[29] Section 303A.04(b).

Consultation Proposals

141. We propose adding, as CP D.3.1, the following duties for the corporate governance committee (or existing committee(s) performing or sharing this function):

(a) to develop and review an issuer's policies and practices on corporate governance and make recommendations to the board;

(b) to review and monitor the training and continuous professional development of directors and senior management;

(c) to review and monitor the issuer's policies and practices on compliance with legal and regulatory requirements;

(d) to develop, review and monitor the code of conduct and compliance manual (if any) applicable to employees and directors; and

(e) to review the issuer's compliance with the Code and disclosure in the corporate governance report section of its financial statements.

142. Other board committees produce a written report to the board on their activities and findings. For example a remuneration committee will produce a remuneration report for board approval that will be disclosed in the annual report. We seek market views on whether the corporate governance committee (or if a corporate governance committee is not set up, the committee(s) performing these duties) should submit a written report to the board on its work annually. We also seek views on whether the report should be published as part of an issuer's corporate governance report.

Expanding the duties of an existing committee

143. Issuers should determine for themselves whether to establish a corporate governance committee. An issuer can expand the duties of an existing board committee or committees (such as audit committee) to include those set out in paragraph 141 as an alternative in order to minimise the work burden on directors, especially INEDs and save time and resources. To retain this flexibility, we propose adding the establishment of a corporate governance committee as a recommendation (RBP D.3.3).

Composition

144. We propose a CP (CP D.3.2) that a corporate governance committee (or an existing committee or committees performing this function) should have a majority of INEDs as its members.

145. We also propose adding a note to the CP stating that a corporate governance committee should have at least one member who is an executive director or non-executive director with sufficient knowledge of the issuer's day-to-day operations. This is to help the committee in discharge its duties.

146. If an issuer establishes a corporate governance committee, we do not propose that the Code state who should chair it and what experience or qualifications are required for its members.

Consultation Questions

Question 39: Do you agree with the proposed terms of reference listed in paragraph 141? Please give reasons and alternative suggestions.

Question 40: Do you consider that the committee(s) performing the proposed duties listed in paragraph 141 should submit to the board a written report on its work annually? Please give reasons for your views.

Question 41: Do you consider that this report (as described in paragraph 140) should be published as part of the issuer's corporate governance report? 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? 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? 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 should comprise a majority of INEDs? Please give reasons for your views.

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? Please give reasons for your views.

D. Audit committee

Current Requirements

147. RBP C.3.7 recommends that the audit committee's terms of reference include reviewing arrangements for issuer's employees to raise concerns about possible improprieties in financial reporting, internal control and other matters. The audit committee should ensure that proper policies are in place for the fair and independent investigations of concerns raised.

148. CP C.3.3(e)(i) states that the audit committee must meet with external auditors at least once a year.

149. The Rules and Code do not require an issuer to have a "whistleblowing" policy.

Issues

150. It is important for employees to be able to raise an alarm on financial reporting, internal control and other matters. We believe that this should be given more prominence.

151. The audit committee should meet with the external auditor on a regular basis so that the performance and progress of the audit is discussed. As a minimum there should be two meetings a year. This is also a recommendation in the audit committee guidelines published by Hong Kong Institute of Certified Public Accountants.

152. An issuer should have a policy in place to enable employees and external persons who have contact with the issuer (e.g. customers and suppliers) to raise concerns relating to the issuer, in confidence.

153. We consider the audit committee the most appropriate committee to be responsible for an issuer's whistleblowing policy. We believe that an issuer should be able to define a whistle blowing policy that is appropriate to its own circumstances, so we do not propose to define in detail, the contents of its policy.

Requirements in other jurisdictions

154. The UK [30] and the Singapore [31] codes contain similar provisions as RBP C.3.7 (arrangements for employees to raise concerns) and they are both subject to "comply or explain".

155. The Singapore Code[32] states that the audit committee should meet with its external auditors at least annually. There is no similar provision in the UK and Australian codes.

Consultation Proposals

156. We propose to upgrade RBP C.3.7 to a CP (see paragraph 147).

157. We also propose to revise CP C.3.3(e)(i) so that instead of once a year, the audit committee should meet at least twice a year with the issuer's external auditor.

158. We propose a new RBP C.3.8 stating that the audit committee should establish a whistleblowing policy for employees and those who deal with the issuer (e.g. customers and suppliers) to raise concerns, in confidence, with the audit committee about possible improprieties in any matter related to the issuer. The policy should include measures for protecting the person raising the concerns.

Consultation Questions

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? 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? Please give reasons for your views.

[30] UK Code C.3.4.
[31] Guideline 11.7.
[32] Guideline 11.5.

Question 48: Do you agree that a new RBP should be introduced to encourage audit committees to establish a whistleblowing policy? Please give reasons for your views.

4. Remuneration of Directors, CEO and Senior Management

Current Requirements

Disclosure of the remuneration of directors and five highest paid employees

159. Appendix 16, paragraph 24 requires an issuer to disclose in its financial statements directors' emoluments for the past financial year, by name. The Rules also require an issuer to disclose the aggregate amount paid to the five highest paid individuals at the issuer, on a no names basis (Appendix 16, paragraph 25).

160. Appendix 16, paragraph 12 requires issuers to disclose the biographical details of senior management in an annual report. An issuer is free to determine who the members of senior management are, for this purpose. The Code states that a remuneration committee should consider the remuneration of both directors and senior management (CP B.1.3 (re-numbered CP B.1.2)). Remuneration in the context of Appendix 16 is the total amounts paid under paragraph 25 (1) to (5) of Appendix 16.

161. RBP B.1.7 recommends that issuers disclose senior management remuneration, by name, in their annual reports.

Issues

162. Although a senior management member may not be a director or one of the five highest paid individuals, he may still make a significant contribution to an issuer's performance and prospects. The Code does not say that an issuer should disclose senior management remuneration or give reasons for non-disclosure.

163. We received views objecting to the disclosure of the remuneration of senior management by name, citing privacy reasons and unhealthy competition for higher pay amongst employees within the same issuer and between the employees of different issuers. This may cause an escalation of senior management pay which may be detrimental to shareholders' interests.

164. The Rules (Note 24.1 of Appendix 16) require the amounts paid to directors to be analysed in accordance with the Companies Ordinance (section 161). This means that sales commission paid or payable to a director on sales generated by him, if any, must be disclosed in financial statements. For the five highest paid individuals at an issuer, the Rules do not require disclosure of this type of remuneration. However, as stated in paragraph 162 senior management makes significant contributions to an issuer's performance and prospects. So, it may be appropriate for sales commission to be disclosed.

165. A CEO may not be a director. If he is not, the Rules (Appendix 16, paragraph 12) do not require his remuneration to be disclosed by name. As a CEO plays an important role in the operations of an issuer, there should be transparency on his remuneration.

Requirements in other jurisdictions

Disclosure of CEO and senior management's remuneration

166. The Australian Corporation Act 2001[33] requires issuers to disclose the remuneration details of each director and the top five highest paid company executives. In the U.S., under Regulation S-K[34] the Securities and Exchange Commission requires the remuneration of the company's CEO to be disclosed by name. The Singapore Code[35] requires disclosure of the remuneration of at least the top five key executives (who are not also directors) of the issuer. The Mainland also requires disclosure of information relating to senior managerial personnel's remuneration[36]. None of the jurisdictions reviewed required disclosure of the remuneration of senior management who did not fall into the categories described above.

Performance-linked remuneration

167. The corporate governance codes of other jurisdictions reviewed place significant emphasis on performance-linked remuneration for executive directors.

168. As well as the Main Principle, the UK Code contains a Supporting Principle that states: "*The performance-related elements of executive directors' remuneration should be stretching and designed to promote the long-term success of the company.*"

169. The PRC Code states that "*To attract qualified personnel and to maintain the stability of management, a listed company shall establish reward systems that link the compensation for management personnel to the company's performance and to the individual's work performance"*. (Article 77). The PRC Code also states that: "*The performance assessment for management personnel shall become a basis for determining the compensation and other reward arrangements for the person reviewed.*" (Article 78).

170. The Australian Code's Principle 8 states that "*Companies should ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to performance is clear.*" The Australian Code also states that the company should design its remuneration policy so that it motivates senior executives to pursue the long term growth and success of the company and demonstrates a clear relationship between senior executives' performance and remuneration.

171. The Singapore Code contains a guideline (equivalent to a CP) that:

"*the performance-related elements of remuneration should be designed to align interests of executive directors with those of shareholders and link rewards to corporate and individual performance. There should be appropriate and meaningful measures for the purpose of assessing executive directors' performance*."

[33] Sections 300 and 300A.
[34] Item 402.
[35] Guideline 9.1.
[36] Article 25 of CSRC's "Issuing and Standards for the Content and Format of Information Disclosure by Companies that Offer Securities to the Public No.2".

Consultation Proposals

172. We propose adding paragraph 25A to Appendix 16 to state that issuers should disclose senior management remuneration by band. We propose that disclosure of the amounts paid to them should be the same as for a director and sales commission paid or payable to senior management should be disclosed in financial statements. Senior management is defined as the same persons whose biographical details are disclosed under the Rules (Appendix 16, paragraph 12).

173. We also propose amending paragraph 24 of Appendix 16 to state that the issuer should disclose the CEO's remuneration (if he is not a director) by name.

174. We propose to upgrade RBP B.1.6 to a CP (re-numbered CP B.1.5).

175. We will retain the current recommendation (RBP B.1.7) that issuers disclose senior management remuneration by name in their annual report and accounts.

Consultation Questions

Question 49: Do you agree with our proposal that issuers should disclose senior management remuneration by band (Appendix 16, new paragraph 25A)? 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? 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? Please give reasons for your views.

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)? Please give reasons for your views.

5. Board Evaluation

Current Requirements

176. The Rules and the Code do not contain any requirement for an issuer to evaluate board performance.

Issues

177. We consider evaluation of a board's performance important to good governance. Board evaluation focuses board members' attention on their roles and duties and identifies areas for improvement. It is also considered useful in boosting board performance. An evaluation of the performance of the board enables issuers to link remuneration to performance.

178. There are views that although companies might undertake board evaluation, they do not necessarily provide meaningful disclosure in their annual reports. Boilerplate reporting may be provided. However, some are of the view that it is not essential to publish the results of the evaluation so long as the results were used by the issuer in improving board performance. We also received comments that many issuers in Hong Kong would not be ready for board evalution and since this is a new proposal, it should first be introduced as an RBP.

Requirements in other jurisdictions

179. There is increasing focus on board evaluation in other jurisdictions. The revised UK Code[37] introduced a new code provision which states that the chairman should confirm to shareholders when proposing re-election of a director that, following formal performance evaluation, the individual's performance continues to be effective and demonstrates commitment to the role. The corporate governance codes in Australia, Singapore and the Mainland also contain provisions on the evaluation of board performance. In the US, the New York Stock Exchange's Listed Company Manual requires a company's governance guidelines to include provisions relating to an annual performance evaluation of the board.

Consultation Proposal

180. We propose adding new RBP B.1.8 that issuers conduct a regular evaluation of its own, and individual directors', performance.

Consultation Question

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? Please give reasons for your views.

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

Current Requirements

181. CP A.1.8 states that if a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board which is material, the matter should not be dealt with by circulation or by a committee and a board meeting should be held.

Issues

182. There are views from issuers that CP A.1.8 is unnecessary. These issuers frequently circulate written resolutions on routine continuing connected transactions. If a director has a conflict of interest he abstains from voting. As long as a quorum of

[37] Published in June 2010.

directors without a conflict remains, the written board resolution can be passed fairly. In their view, a discussion of board resolutions where one or more directors are conflicted is unnecessary.

183. Some market practitioners also commented that CP A.1.8 assumes that non-conflicted directors will not pay attention to a board resolution because they are asked to consider it on paper rather than at a meeting. They commented that good directors would consider the board resolution carefully, whatever the circumstances. However, there are views that for good corporate governance, connected transactions should not be considered by circulation.

184. The intention of CP A.1.8 is to ensure that there is a proper discussion of matters where one or more directors have a conflict of interest. A market commentator argued, that if a resolution is important enough to require board approval, then this should only be given after the board has had an opportunity to discuss it. He further commented that the only circumstance where a physical board meeting was not needed was when all board members were certain to agree with the resolution and a discussion was not required. It is not reasonable to assume all non-conflicted directors would agree on a matter where a substantial shareholder or a director is conflicted. So, directors may need to discuss the matter.

185. Also, the advancement of technology means that it is possible to arrange more frequent board meetings to discuss matters where one or more board members is conflicted. Board members can use telephonic or video conferencing to join a board meeting without physically attending.

186. We received comments during soft consultation that even if tele-conferencing or video-conferencing counts as physical attendance, for a large issuer with many directors located in different time zones, ensuring attendance could still be challenging. However, currently there is no requirement for all directors to attend physical meetings. A quorum is sufficient for physical meetings.

Consultation Proposals

187. We propose that, except for plain language amendments, CP A.1.8 (re-numbered CP A.1.7) will be retained. This means that issuers would continue to be required to either comply with the CP or else explain why they did not in their corporate governance reports.

188. We propose to add a note to CP A.1.8 (re-numbered CP A.1.7) stating that attendance at a board meeting by electronic means including telephonic or video conferencing can be counted as physical attendance.

Consultation Questions

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)? Please give reasons for your views.

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? Please give reasons for your views.

B. Directors' Attendance at Board Meetings

Current Requirements

189. Paragraph 2(c)(iii) of Appendix 23 requires disclosure of each director's attendance at board meetings by name.

190. Currently there is no Rule governing alternate directors' attendance at board meetings.

Issues

191. If a written board resolution is sent to a director and he signs the resolution, some issuers count this as attendance at a "paper board meeting" for the purpose of disclosure under paragraph 2(c)(iii) of Appendix 23. We do not consider the circulation of a written resolution to be a board meeting for this Rule as no physical meeting was held.

192. A director does not need to physically attend a board meeting in order to participate. A director can use telephonic and video-conferencing instead. So these methods of participation should be counted as attendance at a board meeting for paragraph 2(c)(iii) of Appendix 23.

193. Some directors send alternates to attend board meetings on their behalf. There are views that alternates' attendance should not be counted as attendance by the director under paragraph 2(c)(iii) of Appendix 23.

194. If a director is appointed part way during a financial year, disclosure of his attendance at board meetings may seem low in comparison with the number of board meetings held in a year. So, his attendance figure should be disclosed with reference to the number of board meetings held in the year since his appointment.

Consultation Proposals

195. We propose introducing two new notes to paragraph 2(c) of Appendix 23 (re-numbered paragraph I(c) in Appendix 14):

(a) only attendance by a director in person at board meetings should be counted, or attendance by electronic means such as telephonic or video-conferencing; and

(b) 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.

196. We also propose to introduce a new requirement (paragraph I(d) in Appendix 14) that an alternate director's attendance at board or committee meetings should not be considered attendance by the director himself. We propose 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.

Consultation Questions

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 above? 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? 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? Please give reasons for your views.

C. Removing Five Percent Threshold for Voting on a Resolution in which a Director has an Interest

Current Requirements

197. Rule 13.44 states: "*Subject to the exceptions set out in Note 1 to Appendix 3, a director of the issuer shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting.*"

198. Appendix 3 of the Rules sets out the required form and contents of an issuer's articles of association. Paragraph 4(1) of Appendix 3 prohibits a director from voting on a board resolution for the approval of a proposed transaction in which he is interested.

199. Paragraph (3) of Note 1 in Appendix 3 exempts a director from this requirement in certain situations. For example it allows issuers' articles to state that a director may vote on a board resolution for a proposed transaction with a company in which he is beneficially interested in no more than 5% of that company's issued shares or voting rights.

Issues

200. The relevant Rules do not promote good corporate governance. If a director has a material interest in a proposed transaction, he should not vote on a board resolution to approve that transaction. We consider that a director may have material interest in a transaction with a company even if he is interested in no more than 5% of that company's issued shares or voting rights.

201. We note that the proposed change may require an issuer to revise its memoranda and articles of association which is subject to shareholders' approval. We therefore consider that it may be more appropriate to revise Rule 13.44 to exclude this particular exception instead of amending Appendix 3.

Consultation Proposal

202. We propose to revise Rule 13.44 to remove the exemption described in paragraph 199. This change is consistent with the Rule requirements for notifiable transactions.

Consultation Question

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)? Please give reasons for your views.

7. Chairman and Chief Executive Officer

Current Requirements

Division of responsibilities

203. Code Principle A.2 states that there should be a clear division of responsibilities between management of the board and the day-to-day management of business "at a board level", so an issuer does not concentrate decision-making powers in the hands of one individual.

204. CP A.2.1 states that the roles of chairman and CEO should be separate and should not be performed by the same individual.

205. CP A.2.2 states that the chairman should ensure that all directors are properly briefed on issues at board meetings.

206. CP A.2.3 of the Code gives the chairman the responsibility to ensure that directors receive adequate, complete and reliable information in a timely manner.

Chairman's responsibilities

207. RBP A.2.4 recommends that it should be the chairman's duty to provide leadership for the board, to ensure that the board works effectively, and to draw up and approve the agenda for each board meeting.

208. RBP A.2.5 states that the chairman should take responsibility for ensuring that good corporate governance practices and procedures are established.

209. RBP A.2.6 states that the chairman to encourage directors to make a full and active contribution to the board's affairs.

210. RBP A.2.7 states that the chairman should hold annual meetings with the NEDs without the executive directors present.

211. RBP A.2.8 concerns the chairman's responsibility in ensuring effective communication between the board and the shareholders.

212. RBP A.2.9 recommends that the chairman enable non-executive directors to make an effective contribution and ensure a constructive relationship between the executive and non-executive board.

Issues

Division of responsibilities

213. It is important to have a clear division between the responsibilities of board management and the day-to-day management of an issuer's business. Code Principle A.2 provides background to CP A.2.1 which states the roles of Chairman and CEO should be separated. The use of the words "at a board level" in Code Principle A.2 may be confusing and unnecessary.

Chairman's responsibilities

214. Corporate governance is the responsibility of the entire board and not the chairman alone. However, the chairman is responsible for leadership of the board and ensuring that the board works effectively when performing its responsibilities. The recommendations of RBPs A.2.4 to A.2.6, A.2.8 and A.2.9 set out the chairman's role and we believe that these should be given more weight and emphasis by upgrading them to CPs.

215. We consider it important for the chairman to meet separately with INEDs and NEDs in the absence of other directors at least once a year because INEDs and NEDs may represent different shareholder interests.

216. Upgrading the RBPs relating to Chairman's responsibilities to CPs is also in line with the practice of major jurisdictions such as the UK[38] and the US[39].

Requirements in other jurisdictions

217. The UK and Singapore have similar principles to Hong Kong. However, they do not state that this division of responsibilities between board management and day-to-day management should be "at a board level".

218. The information to be received by directors should be "accurate and clear" as well as adequate, complete and reliable. The corporate governance codes of the UK and Singapore include similar provisions[40].

Consultation Proposals

219. In this section of the Code, we propose to:

(a) revise Code Principle A.2 to remove the words "at a board level"; and

(b) amend CP A.2.3 to add "accurate" and "clear" to describe the information to be received by the directors.

220. We propose to upgrade RBPs A.2.4 to A.2.9 to CPs, with minor amendments to the existing wording:

[38] Code Provision A.4.2.
[39] Section 303A.03 of the NYSE Manual.
[40] Supporting principle under A.3 of the UK Code. Guideline 3.2 in the Singapore Code.

(a) RBP A.2.5: adding "primary" to the existing wording to emphasise the chairman's role in corporate governance;

(b) RBP A.2.6: expanding the chairman's responsibilities to include encouraging directors with different views to voice their concerns, allow sufficient time for discussion of issues and to build consensus;

(c) RBP A.2.7: recommending that the chairman hold separate meetings with only INEDs and only NEDs at least once a year;

(d) RBP A.2.8: making a stylistic amendment; and

(e) RBP A.2.9: adding the wording "promote a culture of openness and debate" to further clarify and expand on the chairman's role to enable effective NED contributions and to ensure constructive relations between executive and non-executive directors.

Consultation Questions

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? Please give reasons for your views.

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? Please give reasons for your views.

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.? 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"? 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? 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? Please give reasons for your views.

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? Please give reasons for your

views.

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? Please give reasons for your views.

8. Notifying Directorship Change and Disclosure of Directors' Information

Current Requirements

221. Rule 13.51(2) requires issuers to immediately inform the Exchange and simultaneously announce as soon as practicable when they appoint or re-designate a director or supervisor or when a director or supervisor resigns.

222. Rule 13.51(2)(o) requires an issuer to include certain information in the announcement of a director or supervisor's appointment or re-designation. The issuer must disclose if the person was adjudged by a Court or arbitral body civilly liable for any fraud, breach of duty or other misconduct by him towards an entity he was involved in forming or managing. The full details of the judgment must be included in the announcement.

223. Rule 13.51(2) requires the issuer to make an announcement if one of its directors or supervisors is appointed, resigned or re-designated. For an announcement of appointment or re-designation, it must include details of public sanctions made against the director/supervisor by statutory or regulatory authorities. Rule 13.51B(2) states that if there is a change in any of the information required to be disclosed under (amongst others) Rule 13.51(2)(h) during the course of a director's or supervisor's term of office, the issuer must inform the Exchange and publish an announcement concerning that change. Rule 13.51B(3)(c) states that in respect of Rule 13.51(2)(h), an issuer does not need to disclose any sanction imposed by the Exchange.

224. RBP A.3.3 encourages an issuer to maintain on its website an updated list of its directors identifying their role and function and whether they are INEDs.

Issues

225. Rule 13.51(2) does not require an announcement of the required information described in that Rule, if:

(a) a director retires or is removed by the issuer; or

(b) about a CEO who is not a director.

226. We received market comments that Rule 13.51(2) should cover retirement or removal of directors/supervisors because it is also important to disclose the required information in these circumstances.

227. In some companies, CEOs are not directors. It is important to disclose the required information on their appointment, resignation, re-designation, retirement or removal.

228. Rule 13.51(2)(o) may be too narrowly drafted. It requires disclosure of civil judgements against a director/supervisor if he has committed fraud, breach of duty or other misconduct towards particular companies, business enterprises or their members or partners. We believe Rule 13.51(2)(o) should be broadened to cover all civil judgments of fraud, breach of duty or other misconduct involving dishonesty.

229. We received market comments that the Rules (set out in paragraph 223) may be misinterpreted. In a recent case, an issuer (Issuer A) failed to make an announcement under Rule 13.51(B)(2) about a public censure of one of its directors resulting from a breach involving another issuer (Issuer B). The director was also a director of Issuer B. The public censure announcement was under Issuer B's name, so Issuer A's investors may not have been aware of it. Issuer A may have relied on Rule 13.51B(3)(c) but this is not the intention of the Rule, which is to exempt an issuer from making a further announcement following its receipt of a public sanction. The rationale is that the sanction has already been published on the HKEx website.

230. Not all issuers maintain on their websites updated information relating to their directors. We believe it is important for shareholders to have access to current information on an issuer's directors. This information should also be centralised on the HKEx website so that a person with multiple investments can go to one place to find all directors' information. This also provides an alternative source of the information if an issuer's website is not accessible at any time.

231. This proposal should not be too burdensome for issuers as Appendix 16 (paragraphs 12, 12A and 12B) currently require issuers to include this information in the annual reports and accounts published on their websites. Also, paragraph 2(c)(i) of Appendix 23 of the Rules (re-numbered paragraph I(a) of Appendix 14) requires issuers to disclose in their corporate governance reports the composition of the board, by category of directors, and by name.

Consultation Proposals

232. We propose to amend Rule 13.51(2) as follows:

(a) add "retirement or removal" to the current wording of "appointment, resignation, re-designation", of a director or supervisor;

(b) to include CEO changes, if he is not a director; and

(c) widen 13.51(2)(o) to cover all civil judgements of fraud, breach of duty or misconduct involving dishonesty.

233. We propose to amend Rule 13.51B(3)(c) to clarify that an issuer will not need to disclose any sanction imposed on it by the Exchange.

234. We propose to upgrade RBP A.3.3 to a CP and require that directors' information also be published "on the HKEx website". This updated list should be published every time there is a change.

Consultation Questions

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? Please give reasons for your views.

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)? 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? 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)? 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? 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? Please give reasons for your views.

9. Providing Management Accounts or Management Updates to the Board

Current Requirement

235. There is no requirement in the Rules or the Code for an issuer's management to update the board with its financial performance on a regular basis.

Issues

236. If board members receive management accounts or management updates on a regular basis this helps ensure each member is aware of a company's financial performance and position. Management updates are summary updates on the issuer's financial performance and position rather than detailed accounts. In disciplinary hearings, the Exchange has found that often directors, particularly NEDs, say that they did not receive any such information.

237. Some board members have commented that they do not want to receive management accounts on a regular basis because they may contain unpublished price sensitive information. We do not consider that management accounts information necessarily amounts to price sensitive information as long as the figures are in line with market expectation. An issuer is under a general obligation under Rule 13.09(1) to publish any price sensitive information as soon as possible, whether or not management accounts or management updates are provided to directors.

238. There are comments that the INED role does not include day-to-day management of an issuer so it may not be necessary to provide an INED with regular management accounts or management updates. All directors have a duty to ensure that an issuer complies with the requirement under the Rules to publish price sensitive information. The required fiduciary duties and duties of skill, care diligence apply to all directors. Regular management accounts or management updates would enable directors to perform these responsibilities more effectively and raise appropriate questions when necessary.

239. We note concerns expressed by issuers during soft consultation that the size of management accounts may be large and not all of the information contained is meaningful. So, we consider it acceptable for management to provide summary monthly management updates rather than detailed management accounts.

Consultation Proposal

240. We propose to introduce a new CP (CP C.1.2) stating that management should provide board members with monthly updates which present a balanced and understandable assessment of the issuer's performance and current financial position. This monthly update may include monthly management accounts and management updates.

Consultation Question

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? Please give reasons for your views.

10. Next Day Disclosure for a Director Exercising an Option in the Issuer or the Issuer's Subsidiaries

Current Requirements

241. Rule 13.25A(1) requires issuers to publish a Next Day Disclosure Return on changes in an issuer's issued share capital. The Rules set out the events that trigger this disclosure (Rule 13.25A(2)). These events include the exercise of an option for shares in the issuer by its director or a director of any of its subsidiaries.

242. Rule 13.25A(3) also requires issuers to publish a Next Day Disclosure Return following the exercise of an option for shares in the issuer by persons other than its directors or any of its subsidiaries if the change (individually or on aggregate) in the issuer's share capital is 5% or more compared with its last Monthly Return[41].

Issues

243. We have received market comments that for a large corporation, options exercised by directors of the issuer's subsidiaries could be very difficult to monitor, especially for directors of overseas subsidiaries. For these issuers, the timeline in Rule 13.25A(1) for reporting is difficult to achieve. If directors of an issuer's subsidiaries regularly

[41] Within the meaning of Rule 13.25B.

exercise options, the disclosure requirements of the Rules can be burdensome. Also, Rule 13.25B requires issuers to publish monthly returns for movements in the issuer's equity securities. This means that the exercise of options by directors of the issuer's subsidiaries will be disclosed in the next monthly return.

244. There is also no requirement for these to be reported under the Securities and Futures Ordinance disclosure provisions.

Consultation Proposals

245. We propose to revise the Rules (Rule 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.

246. We also propose to revise the Rules (Rule 13.25A(2)(b)(i) and (ii)) so that 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.

Consultation Questions

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? 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? Please give reasons for your views.

11. Disclosing Long Term Basis on which an Issuer Generates or Preserves Business Value

Current Requirement

247. The Rules and the Code do not require an issuer to disclose the long term basis on which an issuer generates or preserves business value.

Issues

248. For improved transparency, we consider it good governance for shareholders to know what the issuer is investing and its corporate objective. An issuer may change its principal business after listing, often to a completely different business sector. Investors are entitled to be informed of the change to understand the issuer and the context in which it operates.

249. Long term business models are normal for large, well established companies and they routinely disclose this information in their annual reports. However some smaller issuers may not have a corporate strategy and long term business model.

Consultation Proposal

250. We propose to introduce a CP (CP C.1.4) stating directors should include in the issuer's annual report an explanation of the basis on which the company generates or preserves value over the longer term (the business model) and the strategy for delivering the objectives of the company (corporate strategy). This explanation should be included in the separate statement containing a discussion and analysis of the group's performance.

Consultation Question

Question 77: Do you agree that we should introduce the proposed CP (CP C.1.4) as described in paragraph 250? Please give reasons for your views.

12. Directors' Insurance

Current Requirement

251. RBP A.1.9 states that an issuer should arrange appropriate insurance cover against legal action against its directors.

Issues

252. Issuers may be held liable for the statements, actions, failure to act, or other mistakes of a director. It is therefore in the interest of the issuer and its shareholders to insure directors for potential claims against them in the performance of their duties. Insurance may also protect potential claimants if a director has insufficient means to meet their claims.

253. We believe greater emphasis should be given to directors' insurance so that it protects directors, issuers, shareholders and potential claimants.

Requirements in other jurisdictions

254. The UK Code contains a "comply or explain" provision stating that an issuer should arrange appropriate insurance cover in respect of legal action against their directors. The Australian Code[42] recommends issuers send formal letters to directors upon their appointment setting out the key terms and conditions of their directorship. In these letters, issuers are encouraged to address indemnity and insurance arrangements for their directors. The PRC Code[43] states that, after approval by shareholders, a listed company may purchase liability insurance for directors. The US Model Act[44] states

[42] Principle 1, Box 1.1.
[43] Article 39.
[44] Chapter 8, Directors and Officers Subchapter E. Indemnification and Advance for Expenses, § 8.57. Insurance.

that a corporation may purchase and maintain insurance on behalf of a director or officer.

Consultation Proposal

255. We propose to upgrade RBP A.1.9 to a CP (re-numbered CP A.1.8) and add the words "adequate and general" to describe the insurance issuers should provide for directors.

Consultation Questions

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)? Please give reasons for your views.

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)? Please give reasons for your views.

PART II: SHAREHOLDERS

1. Shareholders' General Meetings

A. Notice of Meeting and Bundling of Resolutions

Current Requirement

256. CP E.1.1 states that for each substantially separate issue at a general meeting, a separate resolution should be proposed by the chairman of that meeting.

Issue

257. If resolutions are "bundled" there is a possibility that the significance of a resolution may be hidden from shareholders by less controversial resolutions in the same bundle. For example a resolution on a controversial matter on a change to an issuer's articles of association may be bundled with several uncontroversial administrative amendments on the same subject.

258. We believe that bundling of resolutions discourages effective communication between the issuers and shareholders and should be avoided if possible.

Requirements in other jurisdictions

259. The Singapore Code[45] states that issuers should avoid "bundling" resolutions unless the resolutions are interdependent and linked to form one significant proposal. In Australia, ASX's guidelines states that a company should not "bundle" resolutions in

[45] Guideline 15.2.

a notice of meeting except in limited circumstances and in accordance with the prescribed guidelines[46].

Consultation Proposal

260. We propose to revise CP E.1.1 to state that issuers should avoid "bundling" resolutions unless the resolutions are interdependent and linked so as to form one significant proposal. Where the resolutions are "bundled", issuers should explain the reasons and material implications in the notice of meeting.

261. There is no change in policy direction and the amendments are to make the purpose of CP E.1.1 clearer.

Consultation Question

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? Please give reasons for your views.

B. Voting by Poll

Current Requirements

Exception for Procedural and Administrative Matters

262. Rule 13.39(4) states that any vote by shareholders at a general meeting must be taken by poll.

Clarification of Disclosure in Poll Results

263. Rule 13.39(5) requires an issuer to announce general meeting poll results. These results must include:

(a) the total number of shares entitling the holder to attend and vote for or against the resolution at the meeting;

(b) the total number of shares entitling the holder to attend and vote only against the resolution at the meeting; and

(c) the number of shares represented by votes for and against the relevant resolution.

264. Rule 13.40 sets out the Rules under which parties must abstain from voting in favour of a resolution. For example, controlling or substantial shareholders are required to abstain from voting in favour of a resolution on an issuer's voluntary withdrawal from listing (Rule 6.12(1)). Under Rule 13.40 a party that must abstain from voting in favour of a resolution can still vote against it.

[46] ASX's Guidelines for Notice of Meeting dated 2 August 2007.

265. There are also Rules which prohibit certain parties from voting on a resolution at a general meeting. For example, connected persons with a material interest in a connected transaction are prohibited from voting on a resolution to approve the transaction (Rule 14A.18(1)).

Timing of Explanation of Polling Procedures

266. CP E.2.1 states that at the commencement of a general meeting, the issuer's chairman should ensure that an explanation is provided of the detailed procedures for conducting a poll.

Issues

Exception for Procedural and Administrative Matters

267. Rule 13.39(4) requires mandatory voting by poll at general meetings on all matters, including procedural and administrative matters. We received market comments that this may be an unnecessary burden for issuers.

268. It has been suggested that, for procedural and administrative matters, voting by a show of hands may be more practical and appropriate. For example, the adjournment of a general meeting to count the votes is usually a procedural matter. However, the Rules currently require voting by poll to adjourn a meeting.

269. If the Rules exclude procedural and administrative matters from the requirement for voting by poll, the issuer will have to judge whether a matter meets this definition. So, it is possible that an issuer may mistakenly classify a matter as procedural and administrative that should be voted on by poll. For example, an issuer may adjourn a meeting deliberately to canvass votes in favour of the resolution. It has been suggested that the concerns could be alleviated if the factors of what constitute procedural and administrative matters are clearly set out.

Clarification of Disclosure in Poll Results

270. We received market comments that some issuers' announcements of poll results do not correctly disclose the total number of shares entitling the shareholders to vote for or against a resolution.

271. The Rules require an issuer to announce poll results at a general meeting, including the total number of shares entitling the holders to attend and vote for or against the resolution at the meeting.

272. However, Rule 13.39(5) does not require an announcement to separately disclose how many shares need to be abstained from voting, due to the restrictions of the Rules, for each resolution. Therefore, the current drafting of the Rules has caused this unintended information omission in poll results' announcements.

Timing of Explanation of Polling Procedures

273. An issuer's chairman should not be restricted to giving an explanation of polling procedures at the start of a general meeting. A chairman of the meeting may find it more appropriate to do this later in the meeting, e.g. immediately prior to voting.

Consultation Proposals

Exception for Procedural and Administrative Matters

274. We propose amending Rule 13.39(4) to allow the chairman to decide whether a resolution on a procedural and administrative matter should be excluded from the requirement for voting by poll. We propose to add a note to Rule 13.39(4) stating that procedural and administrative matters are those which:

(a) do not appear on the agenda of the notice of general meeting or any supplementary circular to shareholders; and

(b) relate to the chairman's duties to maintain the orderly conduct of the meeting and/or allow the business of the meeting to be properly and effectively dealt with, whilst allowing all shareholders a reasonable opportunity to express their views.

275. The following are examples of procedural and administrative resolutions:

(a) to adjourn the meeting:

(i) to ensure orderly conduct of the meeting. (e.g. if the meeting facilities to house the number of members attending has become inadequate); or

(ii) to maintain discipline of the meeting, e.g. if it becomes impossible to ascertain the views of the members, or there is disorder or threat of disorder from members or if there is a disturbance caused by members or the uninvited public; or

(iii) to respond to an emergency such as a fire, a serious accident or hoisting of tropical cyclone warning signal No. 8 during a meeting; or

(iv) at the end of the annual general meeting to announce results; and

(b) to end a particular discussion which has gone on for too long and move on to the next business (e.g. if there are deliberate irrelevant or repetitive questions from the floor).

276. We also propose, subject to the result of this consultation, to provide guidance on procedural and administrative matters in Frequently Asked Questions to be published on implementation.

Clarification of Disclosure in Poll Results

277. We propose amending Rule 13.39(5) to clarify the disclosure requirements. It will be amended to state that an announcement by an issuer of poll results must include:

(a) shares entitling the holder to attend and vote on a resolution at the meeting;

(b) shares entitling the holder to attend and abstain from voting in favour as set out in Rule 13.40;

(c) shares of holders that are required under the Listing Rules to abstain from voting; and

(d) shares represented by actual votes for or against a resolution.

278. These amendments are to clarify the Rule rather than to change its intention.

Timing of Explanation of Polling Procedures

279. We propose to remove the words "at the commencement of the meeting" from CP E.2.1.

Consultation Questions

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 from voting by poll? Please give reasons for your views.

Question 82: Do you agree with the examples in paragraph 275? Do you have any other examples to add? Please give reasons for your view.

Question 83: Do you agree that our proposed amendments to Rule 13.39(5) clarify disclosure in poll results? 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? Please give reasons for your views.

C. Shareholders' Approval to Appoint and Remove an Auditor

Current Requirements

280. The Rules require announcement of a change of auditors (Rule 13.51(4)) but do not specifically state that an issuer must appoint an auditor. The Rules do not require shareholders' approval to remove an issuer's auditor before the end of its term of office.

281. For overseas listed issuers, Rule 19.20 requires their annual accounts to be audited by a person, firm or company who is a practising accountant of good standing. There is a similar provision in Rule 19A.31 for Mainland issuers. The "*Joint Policy Statement Regarding the Listing of Overseas Companies*" states that the appointment and removal of auditors must be approved by members on terms comparable to those required of a Hong Kong incorporated public company.[47]

[47] Item 1(e) in the table at page 8 of the Joint Policy Statement Regarding the Listing of Overseas Company published on 7 March 2007.

282. Section 131 of the Hong Kong Companies Ordinance states that:

"(1)Every company shall at each annual general meeting of the company appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting of the company.

…

A company may by ordinary resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him;"

Issues

283. The Rules do not require shareholders to approve appointment of an auditor. An issuer can also remove an auditor without shareholder approval, for whatever reason before the expiry of its term of office, if the law of its country of incorporation allows. Although Hong Kong law requires that the appointment and removal of an auditor before the term of his office must be by shareholders' approval, the majority of our issuers are not incorporated in Hong Kong and so are not subject to the Hong Kong Companies Ordinance.

284. There may be a variety of reasons that an issuer may choose to remove an auditor. An issuer may choose to do so because the auditor had performed badly. So, it may be preferable to remove the auditor immediately and not have to wait for a shareholders' meeting to approve the removal.

285. If an issuer wishes to remove an auditor because of a dispute over fees, it would also be inconvenient to wait for a shareholders' meeting to remove the auditor.

286. In some circumstances, an issuer may wish to remove an auditor to prevent the publication of its findings, if these could jeopardize the issuer's business prospects or are troublesome in other ways.

287. In these situations, the removal of an auditor would be a non-routine event that would imply a dispute between the issuer and the auditor. Therefore, shareholders could reasonably expect to have the right to approve the removal. The auditors may also wish to present arguments to shareholders at the meeting held to remove them.

Requirements in other jurisdictions

288. The UK, Australia and Singapore[48] all have laws which require a listed or public company to appoint an auditor. These countries' legislation[49] also requires a company to remove an auditor by a resolution at a shareholders' meeting, and with a special notice of the resolution.

[48] UK: Section 489 of the Companies Act 2006, Australia: Sections 327A and B and Singapore: Section 205.
[49] UK: Section 510 of the Companies Act, Australia: Section 329 of Corporations Act 2001 and Singapore: Section 205(4) of Companies Act.

289. In the Mainland, the Company Law[50] requires the appointment or removal of a company's auditor to comply with the company's articles of association and is a matter to be decided at general meeting or by the board of directors. Before a resolution on removal is voted on, the auditor must be allowed to make representations. The CSRC requires the appointment or removal of a company's auditor to be approved at general meeting[51].

Consultation Proposal

290. We propose a new Rule 13.88, to require shareholders' approval at a general meeting of any proposal to appoint an auditor and to remove an auditor before the end of his term of office. We propose that, for a proposal to remove the auditor, the Rule should require the issuer to send a circular to shareholders, containing any written representation from the auditor. The auditor must be allowed to make a written and/or verbal representation at the general meeting to remove him.

Consultation Questions

Question 85: Do you agree with our proposal to add new Rule 13.88 to require shareholder approval to appoint the issuer's auditor? 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? 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? Please give reasons for your views.

D. Directors' Attendance at Meetings

Current Requirements

291. RBP A.5.7 states that NEDs should regularly attend and actively participate in board meetings, board committee meetings and general meetings.

292. RBP A.5.8 states that NEDs should contribute to an issuer's "strategy and policies".

293. CP E.1.2 states that the chairman of the board should attend the annual general meeting and arrange for the chairman of the audit, remuneration and nomination committees to be available to answer questions at the meeting.

[50] Article 170 of the PRC Company Law; Article 40 of the "Guidance on Listed Company Articles of Association (2006 Amended Version)".
[51] Guidance on Listed Company Articles of Association (2006 Amended Version).

Issues

294. NEDs including INEDs should attend meetings to perform the duties expected of them. If not, they cannot actively participate in decision-making or contribute to an issuer's strategy and policies.

295. NEDs including INEDs should attend general meetings to meet shareholders and answer any questions they have, including those relating to board committees. These directors may be encouraged to attend if disclosure of attendance at general meetings was mandatory.

296. It is important that the issuer's chairman and the chairmen of board committees attend the general meeting so that they are aware of shareholders' concerns and can answer their questions.

297. CP E.1.2 only mentions that the chairmen of the audit, remuneration and nomination committee should attend general meetings. However, an issuer may have other committees.

Consultation Proposals

298. We propose to upgrade RBPs A.5.7 and A.5.8 (re-numbered CP A.6.7 and CP A.6.8) to CPs and clarify that NEDs including INEDs should attend meetings and contribute to the issuer's strategy and policies.

299. We propose introducing a new mandatory disclosure in Appendix 23 (re-numbered paragraph I(c) of Appendix 14) stating that an issuer must disclose details of attendance at general meetings of each director by name.

300. We propose to revise CP E.1.2 to add "any other committees" in the existing wording.

Consultation Questions

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)? Please give reasons for your views.

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)? Please give reasons for your views.

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? Please give reasons for your views.

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? Please give reasons for your views.

E. Auditor's Attendance at Annual General Meetings

Current Requirements

301. There is no requirement for auditors to attend annual general meetings.

302. The Companies Ordinance[52] states that: "*the auditors of a company are entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting which any member of the company is entitled to receive, and to be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as auditors*."

Issues

303. An issuer's external auditor should be available to answer shareholders' questions about the audit and the issuer's annual accounts. The external auditors are responsible to shareholders as a whole for their audit of the annual accounts and auditors' report rather than to individual shareholders[53]. We believe that the external auditors should be available at the general meeting to answer shareholders' questions relating to the audit.

304. However, there are opposing views as follows:

(a) the legal implications of the auditor answering specific questions about their audit are not clear. Auditors may only be able give generic answers to questions so that they are not held responsible for an answer that a shareholder relies upon;

(b) an auditor's conclusions are for the financial statements as a whole, so shareholders should not rely too much on answers given about individual items within financial statements;

(c) shareholders may not understand the nature and limitations of an audit. So they may ask the auditor for an inappropriate amount of detail about the auditors' procedures;

(d) the amounts stated in the financial statements are the most relevant information for shareholders. These are the responsibility of directors not auditors; and

(e) it is likely that auditors will be drawn into debates with dissatisfied shareholders on matters for which they are not responsible.

[52] Section 141(7) of the Companies Ordinance.
[53] Royal Bank of Scotland v Bannerman and others at www.scotcourts.gov.uk/opinionsv/mcf1807c.html.

305. The objections in paragraph 304 can be dealt with by an issuer making shareholders aware of the limitations of the auditors' role and in attending the meeting before shareholders to answer questions.

306. Most of the parties we spoke to supported the proposal, stating that it is already common practice for external auditors to attend general meetings.

Requirements in other jurisdictions

307. The Australian law[54] requires a listed company's auditor to attend the company's annual general meeting and answer questions. The law provides for four categories of questions that may be put to auditors: the conduct of the audit, the audit report, accounting policies and auditor independence.

308. The Singapore Code contains a "commentary" that external auditors should attend the listed company's general meetings[55]. We are not aware of any similar requirements in the UK or the US.

Consultation Proposal

309. We propose to include a statement in CP E.1.2 that management should ensure the external auditor attend the 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.

Consultation Question

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? Please give reasons for your views.

2. Shareholders' Rights

Current Requirements

310. Paragraph 3(b) of Appendix 23 recommends disclosure of shareholders' rights on:

" (i) the way in which shareholders can convene an extraordinary general meeting;

(ii) the procedures by which enquiries may be put to the board with sufficient contact details to enable such enquiries to be properly directed; and

(iii) the procedures for putting forward proposals at shareholders' meetings with sufficient contact details."

[54] Sections 250RA and 250T of Corporations Act.
[55] Commentary 15.3.

Issues

311. In line with the general aim of this review to improve transparency by increasing the level of disclosure requirements, we consider that they should be upgraded to mandatory disclosure requirements.

Consultation Proposal

312. We propose to upgrade the disclosure requirements of shareholders' rights under paragraph 3 (b) of Appendix 23 from "recommended" to "mandatory". (Re-numbered paragraph O of Appendix 14).

Consultation Question

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)? Please give reasons for your views.

3. Communication with Shareholders

A. Establishing a Communication Policy

Current Requirement

313. The Rules and the Code contain no requirement for issuers to establish a shareholder communication policy.

Issues

314. Code Principle E.1 states that the board should have an "on-going dialogue with shareholders" but the Code does not specify that an issuer should have a shareholder communication policy. Listing Committee disciplinary hearings have sometimes found that a lack of communication policy and internal procedures for the dissemination of information was partially the reason for a Rule breach.

315. The aim of an issuer's communication policy should be to provide shareholders with information about the issuer and enable them to engage actively with the issuer and exercise their rights as shareholders in an informed manner. In our view, a shareholders' communication policy should include, as a minimum:

(a) a strategy with dedicated management personnel in charge of ensuring effective and timely dissemination of information to shareholders;

(b) provide shareholders with ready access to balanced and understandable information about the company;

(c) make it easy for shareholders to participate in annual general meetings and make available the chairmen of the board committees, appropriate management executives, auditors at annual general meetings to answer questions from shareholders; and

(d) shareholders may, at any time, raise questions and request for information, to the extent it is publicly available, from directors and management.

316. Information could be communicated to shareholders through a range of forums, including: publications (e.g. annual reports, interim reports, notices, circulars and announcements), online (e.g. publications posted on the issuer's website), and in person (e.g. attending annual general meetings and making investor presentations).

Consultation Proposal

317. We propose a new CP E.1.4 recommending that the board should establish a shareholder communication policy that is regularly reviewed by the board to ensure its effectiveness.

Consultation Question

Question 94: Do you agree with our proposed new CP E.1.4 stating that issuers should establish a shareholder communication policy? Please give reasons for your views.

B. Publishing Constitutional Documents on Website

Current Requirement

318. The Rules and the Code do not require publication of an issuer's memorandum and articles of association ("**M&A**") on an issuer's website or the HKEx website.

Issues

319. An issuer's constitutional document is a very important document because it sets out the issuer's rules for its own governance. So, investors should have access to up-to-date constitutional documents. However, these documents are usually difficult for shareholders to find.

320. We believe that investors should be able to access an issuer's constitutional documents on the issuer's website and the HKEx website.

Requirements in other jurisdictions

321. The UK, Australia and Singapore do not require the publication of an issuer's constitutional documents. Instead, an issuer must send a copy to the relevant body (e.g. Companies House in the UK) upon incorporation and when they are updated. This body may then make them available to the public for a fee. A shareholder may also request a copy of an issuer's constitutional documents from the issuer. This may also be subject to a fee.

322. The Shanghai Stock Exchange ("**SSE**") Listing Rules state that an issuer must, within five trading days before the listing of its stocks, publish its constitutional documents in the designated media or on the SSE's website. An issuer must also report an amendment to its constitutional documents to SSE and make timely disclosure on the SSE's website[56].

Consultation Proposal

323. We propose adding new Rule 13.90 requiring an issuer to publish its constitutional documents on its own website and on the HKEx website on a continuous basis. This document should be an up-to-date consolidated version of its M & A or equivalent constitutional document.

Consultation Question

Question 95: Do you agree with our proposal to add 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? Please give reasons for your views.

C. Publishing Procedures for Election of Directors

Current Requirement

324. The Rules and the Code do not require publication of an issuer's procedures for shareholders to propose a person for election as a director.

Issues

325. We received suggestions from the market that the procedures for shareholders to propose a person for election as a director should be included in the circular accompanying the notice of annual general meeting.

326. We agree that issuers should publish these procedures, but believe that posting them on the issuer's website would be more appropriate and make them publicly accessible.

Requirements in other jurisdictions

327. There does not appear to be a similar requirement in the jurisdictions that we examined.

Consultation Proposal

328. We propose adding 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.

[56] Article 11.12.3 of the SSE Listing Rules.

Consultation Question

Question 96: Do you agree with our proposal to add 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? Please give reasons for your views.

D. Disclosing Significant Changes to Constitutional Documents

Current Requirement

329. Paragraph 3(c)(i) of Appendix 23 recommends disclosure of "*any significant changes in the listed issuer's articles of association during the year*".

Issues

330. Although we are already proposing a new Rule (Rule 13.90, see paragraph 323) that an issuer must publish on its own website and on the HKEx website an up to date consolidated version of its articles of association. However, if an issuer replaces its articles of association published on its website (and HKEx website) with an updated version it will not be easy to find out whether significant changes have been made and what these are.

Consultation Proposals

331. We propose to upgrade the recommended disclosure on any significant change to the issuer's articles of association during the year (paragraph 3(c)(i) of Appendix 23) to a mandatory disclosure in the corporate governance report (re-numbered paragraph P(a) of Appendix 14).

Consultation Question

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)? Please give for your views.

PART III: COMPANY SECRETARY

1. Company Secretary's Qualifications, Experience and Training

Current Requirements

332. Rule 8.17 states that a company secretary must "*be a person who is ordinarily resident in Hong Kong and who has the requisite knowledge and experience to discharge the functions of secretary of the issuer and who:—*

(1) in the case of an issuer which was already listed on 1st December 1989 held the office of secretary of the issuer on that date;

(2) is an Ordinary Member of The Hong Kong Institute of Chartered Secretaries, a solicitor or barrister as defined in the Legal Practitioners Ordinance or a professional accountant; or

(3) is an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging those functions."

Mainland issuers

333. Rule 19A.16 states that the company secretary of an issuer incorporated in the Mainland does not need to be ordinarily resident in Hong Kong as long as he can meet the other requirements of Rule 8.17.

334. The Note to Rule 19.A.16 states that if the company secretary does not possess a qualification referred to in paragraph 332(2) the issuer will have to satisfy the Exchange that he meets the requirement referred to in paragraph 332(3). In assessing "relevant experience" the Exchange will normally consider, among other things, the period of his employment with the issuer and his familiarity with the Rules.

335. The Rules and the Code do not require company secretaries to participate in training.

Issues

336. Rule 8.17 on company secretary's qualifications is Hong Kong focused. The Exchange lists an increasing number of issuers that operate outside Hong Kong. In particular, a substantial number of issuers principally operate in the Mainland.

337. In September 2009, we published two Listing Decisions on the application of Rule 8.17(3). In both cases, the applicants were Mainland issuers and the proposed appointees did not satisfy the requirements under Rule 8.17(1) and (2). Based on the facts stated in these Listing Decisions, we decided that the proposed appointees, in both cases, satisfied the Rule 8.17(3) requirement.

338. So, there may be a need to modify these Rules to make it clearer that qualifications and experience outside Hong Kong are acceptable.

339. The current requirements on company secretaries are in Chapter 8 which primarily governs qualification for listing of equity securities. The Rules do not specify a continuous obligation to comply with the requirements.

340. Company secretaries can play an important role in enhancing corporate governance standards. These standards, which can be complex, change frequently and should be tailored to an issuer's circumstances. Also, there are views that possessing one of the professional qualifications under Rule 8.17(2) does not automatically equip the person with the skills to be a competent company secretary. Requiring company secretaries to participate in regular training relevant to their roles and responsibilities may be necessary.

Consultation Proposals

341. We propose to add a new section entitled "Company Secretaries" to Chapter 3 of the Rules. We propose moving the company secretary's qualifications and experience requirements from Rule 8.17 to a new section in Chapter 3 as Rule 3.28.

342. The listing eligibility requirement of Rule 8.17 will state that an issuer's company secretary must meet the new Rule 3.28.

343. In new Rule 3.28 we propose to emphasise the two requirements that enable a person to carry out the functions of a company secretary rather than on membership of particular Hong Kong bodies. These are:

(a) academic or professional qualifications; and

(b) relevant experience.

344. The Exchange will consider one or both of these items when deciding whether a person is capable of performing company secretary functions. We propose adding a note to Rule 3.28 explaining what the Exchange will consider when assessing these qualities.

345. The proposed note on academic or professional qualifications will list three that the Exchange considers acceptable. These are:

(b) membership of the HKICS; or

(c) being a solicitor or barrister (as defined in the Legal Practitioners Ordinance); or

(d) being a professional accountant (as defined in the Professional Accountants Ordinance).

346. The Exchange will assess other academic or professional qualifications to consider if they are acceptable. The proposed note on relevant experience will list the following items that the Exchange will consider. These are:

(a) length of employment with the issuer and other issuers;

(b) familiarity with the Exchange Listing Rules;

(c) relevant training taken and/or to be taken in addition to the minimum requirement under the proposed Rule 3.29 (see paragraphs 349 and 350); and

(d) professional qualifications in other jurisdictions.

347. We propose to remove the requirement for a company secretary to be ordinarily resident in Hong Kong.

Mainland issuers

348. We also propose to repeal Rule 19A.16. Company secretaries of Mainland issuers would need to meet the same requirements as for all other issuers.

Company secretary training

349. We propose adding Rule 3.29 stating that a company secretary must attend 15 hours of continuing professional education in every financial year.

350. We understand that many company secretaries have years of experience and already keep up to date with the latest legal and regulatory developments. However, they may not meet the proposed 15-hour training requirement. We therefore propose the following implementation timetable:

"A person who was a company secretary:

(i) on 1st January 2005 does not need to comply with rule 3.29 until 1st August 2011;

(ii) between 1st January 2000 to 31st December 2004 does not need to comply with rule 3.29 until 1st August 2013;

(iii) between 1st January 1995 to 31st December 1999 does not need to comply with rule 3.29 until 1st August 2015;

(iv) on or before 31st December 1994 does not need to comply with rule 3.29 until 1st August 2017."

Consultation Questions

Question 98: Do you agree with our proposal to introduce a new Rule 3.28 on requirements for company secretaries' qualifications and experience? 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? Please give reasons for your views.

Question 100: Do you agree that the Exchange should consider the list of items set out in paragraph 346 when deciding whether a person has the relevant experience to perform company secretary functions? 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? Please give reasons for your views.

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? Please give reasons for your views.

Question 103: Do you agree with our proposal to add Rule 3.29 requiring company secretaries to attend 15 hours of professional training per financial year? Please give reasons for your views.

Question 104: Do you agree with the proposed transitional arrangement on compliance with Rule 3.29 in paragraph 350? Please give reasons for your views.

2. New Section in Code on Company Secretary

Current Requirements

351. The Rules and the Code do not define a company secretary's role and responsibilities. However CP A.1.4 states that all directors should have access to the advice and services of the company secretary. This requirement ensures board procedures, rules and regulations, are followed.

Issues

Role and responsibilities

352. The company secretary plays an important role in:

(a) supporting the board;

(b) ensuring good information flow within the board;

(c) ensuring board policy and procedures are followed;

(d) advising the board on governance matters; and

(e) facilitating induction and directors' professional development.

353. Despite the importance of the company secretary's role and duties, these are not defined in the Rules or Code.

Knowledge of the issuer's affairs

354. Some, particularly small or new, issuers find it more cost effective to employ external service providers as company secretaries. Many of these provide good support to issuers. However, there is a concern that some external service providers may not have sufficient knowledge of the issuer's affairs in order to perform their duties effectively.

355. If an external service provider has a person to contact at the issuer who is sufficiently senior this helps ensure the accountability of the outsourced company secretary function. This contact person can provide the external service provider with his knowledge of the issuer's business and day-to-day management.

Selection, appointment, dismissal and reporting line

356. There are concerns that, despite the importance of the role, issuer's company secretaries tend to be regarded by the board as junior members of staff and may not even be asked to attend board meetings. Some issuers may deliberately employ junior staff as their company secretary so that they do not question the authority of the board on policy and procedures or governance matters.

357. The Rules and Code do not state who can select, appoint and dismiss a company secretary. To raise awareness of the importance of the role, the board could be given this responsibility. To elevate the role of company secretary, it may also be preferable for the company secretary to report directly to the board chairman or CEO.

Requirements in other jurisdictions

358. It is one of the UK Code's supporting principles that: "*Under the direction of the chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non executive directors, as well as facilitating induction and assisting with professional development as required. The company secretary should be responsible for advising the board through the chairman on all governance matters.*"[57] It is a UK code provision that "*all directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with.*"[58] The Singapore Code contains similar provisions as the UK. The Australian code states that a company secretary is responsible for "governance matters"[59].

359. The Mainland defines the role and responsibilities of a company secretary in detail in its Code and listing rules[60].

360. The UK, Singapore and Australian codes state that the appointment and removal of a company secretary should be a board decision.

---

[57] B.5.
[58] Code Provision B.5.2.
[59] Commentary on "The board and company secretary".
[60] Article 90 of the PRC Code and Sections 3.2.1 and 3.2.2 of the Shanghai Stock Exchange Listing Rules.

361. Although the other corporate governance codes reviewed did not directly mention the reporting line of the company secretary, these codes imply a reporting line from the company secretary to the chairman. The Australian code states that the company secretary should be "accountable to the board, through the chair, on all governance matters"[61]. The UK Code and the Singapore Code state that the company secretary's responsibilities are carried out under the direction of the chairman.

Consultation Proposals

362. We propose a new section F of the Code entitled "Company Secretary." This section's principle will set out the company secretary's role and responsibilities including all of the items listed in paragraph 352.

363. We propose new CP F.1.1 stating that the company secretary should be an employee of the issuer and have day-to-day knowledge of the issuer's affairs.

364. Where an issuer engages an external service provider as its company secretary, it should disclose the identity of a person with sufficient seniority (e.g. chief legal counsel or chief financial officer) at the issuer that the external provider can contact.

365. We propose adding new CP F.1.2 stating that the board should approve the selection, appointment or dismissal of the company secretary. We propose a note to this CP recommending that a physical board meeting should be held to discuss the dismissal of the company secretary and board should not deal with this by a written resolution.

366. We propose adding new CP F.1.3 stating that the company secretary should report to the board chairman and/or the chief executive officer.

367. We propose moving existing CP A.1.4 to the new section on company secretaries as CP F.1.4. This states that all directors should have access to the advice and services of the company secretary to ensure that board procedures, and all applicable rules and regulations, are followed.

368. Lastly, we propose adding new CP F.1.5 stating that the company secretary should maintain a record of the training undertaken by directors for each financial year under A.5.5 (re-numbered CP A.6.5). Please see Section 2, Part I of Chapter 2 on directors' training.

Consultation Questions

Question 105: Do you agree with our proposal to include a new section of the Code on company secretary? Please give reasons for your views.

Question 106: Do you agree with the proposed principle as described in paragraph 362 and set out in full in page 27 of Appendix II ? 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? Please give reasons for your views.

[61] Commentary on "The board and company secretary".

Question 108: Do you agree with our proposal described in paragraph 364, that if an issuer employs an external service provider, it should disclose the identity of its issuer contact person? Please give reasons for your views.

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? 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? Please give reasons for your views.

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? Please give reasons for your views.

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? Please give reasons for your views.

CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS

1. Definition of "Announcement" and "Announce"

Current Requirement

369. Wherever an issuer is required to make an announcement, the Rules state it must: "publish an announcement in accordance with rule 2.07C".

Issue

370. The publication of an announcement is a common requirement and so the phrase "publish an announcement in accordance with rule 2.07C" is repeated frequently in the Rules. We believe it would be clearer to define the terms "announcement" and "announce" in the Rules.

Consultation Proposal

371. We propose to define the term "announcement and announce" in the Rules as "means publication of the announcement in accordance with rule 2.07C".

Consultation Question

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? Please give reasons for your views.

2. Authorised Representatives' Contact Details

Current Requirement

372. Rule 3.06(1) requires an authorised representative to provide his contact details in writing to the Exchange. GEM LR 5.25(1) requires an authorised representative to provide his mobile telephone number to the Exchange in addition to the information required by Rule 3.06(1).

Issue

373. It is important that the Exchange be able to contact an issuer's authorised representatives at all times especially to clarify matters, such as discuss the contents of press articles on the issuer that may potentially be price sensitive before trading commences in the morning.

Consultation Proposal

374. We propose to amend Rule 3.06(1) to include the mobile and other telephone numbers, email and correspondence addresses and other contact details as the Exchange may prescribe from time to time of authorised representatives.

Consultation Question

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"? Please give reasons for your views.

3. Merging Corporate Governance Report Requirements into Appendix 14

Current Requirements

375. Appendix 23 of the Rules requires issuers to include a Corporate Governance Report in the summary financial report prepared by the board of directors and in the annual report. Appendix 23 is divided into two parts: "Mandatory disclosure requirements" and "Recommended disclosures". The purpose is to mandate disclosure of certain matters in Code Provisions and encourage disclosure of recommended best practices matters.

376. The following topics have mandatory disclosure requirements:

(a) Corporate governance practices;

(b) Directors' securities transactions;

(c) Board of directors;

(d) Chairman and chief executive officer;

(e) Non-executive directors;

(f) Remuneration of directors;

(g) Nomination of directors;

(h) Auditors' remuneration; and

(i) Audit committee.

377. The recommended disclosures include the following topics:

(a) Share interests of senior management;

(b) Shareholders' rights;

(c) Investors relations;

(d) Internal controls; and

(e) Management functions.

Issues

378. The Code and Appendix 23 are closely linked. Appendix 23 sets out mandatory and recommended disclosure for particular subject areas of the Code. However, as they are separated into two different appendices, readers are constantly required to cross-refer. This is an unnecessary obstacle for readers who want to find out and understand the requirements.

Consultation Proposals

379. We propose merging Appendix 23 into Appendix 14. The requirements for Corporate Governance Report will form paragraphs G to P of Appendix 14, headed "Mandatory Disclosure Requirements" and paragraphs Q to T "Recommended Disclosures".

380. Substantive changes to the requirements of the Corporate Governance Report section of Appendix 14 are discussed separately in Chapter 2. They include:

(a) time commitment disclosures for NEDs under Section 1, Part I of Chapter 2;

(b) directors' and alternate directors' attendance at board meetings in Section 6B, Part I of Chapter 2;

(c) upgrading recommended disclosures to mandatory disclosures of information on shareholders' rights under Section 2 in Part II of Chapter 2; and

(d) upgrading recommended disclosures to mandatory disclosures of significant changes to the constitutional documents under Section 3D of Part II of Chapter 2.

381. Consequential amendments have also been made to the requirements of the Corporate Governance Report section on the summary of work performed by the nomination, corporate governance and audit committees. The Corporate Governance Report section has been amended to require disclosure of an external company secretarial service provider's issuer contact (see paragraph 364) and non-compliance with company secretary training requirements (see paragraphs 349 to 350).

Consultation Questions

Question 115: Do you agree with our proposal to merge Appendix 23 into Appendix 14 for ease of reference? 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? Please give reasons for your views.

APPENDIX I: PROPOSED AMENDMENTS TO THE RULES

(Unless otherwise specified, set out below are the draft Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)

The marked-up parts represent the proposed amendments to the Main Board Rules.

Chapter 1

INTERPRETATION

1.01 Throughout this book, the following terms, save where the context otherwise requires, have the following meanings:

"announcement or announce" means announcement published under rule 2.07C

Chapter 3

AUTHORISED REPRESENTATIVES, ~~AND~~ DIRECTORS, BOARD COMMITTEES AND COMPANY SECRETARY

Authorised Representatives

…

3.06 The responsibilities of an authorised representative ~~will be as follows~~ are:—

(1) at all times (particularly ~~prior to~~ before commencement of trading in the morning) to be the principal channel of communication between the Exchange and the ~~listed~~ issuer and to supply the Exchange with details in writing of how ~~he can be contacted~~ to contact him including home, ~~and~~ office, mobile and other telephone numbers, ~~and, where available,~~ email address and correspondence address (if the authorised representative is not based at the registered office), facsimile numbers if available, and any other contact details prescribed by the Exchange from time to time;

Directors

3.08 The board of directors of ~~a listed~~ an issuer is collectively responsible for its ~~the~~ management and operations ~~of the listed issuer~~. The Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. This means that every director must, in the performance of his duties as a director:—

(a) act honestly and in good faith in the interests of the company as a whole;
(b) act for proper purpose;
(c) be answerable to the ~~listed~~ issuer for the application or misapplication of its assets;
(d) avoid actual and potential conflicts of interest and duty;
(e) disclose fully and fairly his interests in contracts with the ~~listed~~ issuer; and
(f) apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the ~~listed~~ issuer.

Directors do not satisfy the required levels of skill, care and diligence by delegating their responsibilities to colleagues or management in the issuer and paying attention to its affairs only at formal meetings. At a minimum, they must take an active interest in its affairs and obtain a general understanding of its business. They must follow up anything untoward that comes to their attention.

Note: These duties are summarised in "A Guide on Directors' Duties" issued by the Companies Registry in July 2009. In addition, directors are generally expected by the Exchange to follow the Guidelines for Directors and the Guide for Independent Non-executive Directors published by the Hong Kong Institute of Directors (www.hkiod). In determining whether a director has met the expected standard of care, skill and diligence, courts will generally consider a number of factors. These include the functions that are to be performed by the director concerned, whether he is a full-time executive director or a part-time non-executive director and his professional skills and knowledge.

3.10A An issuer must appoint independent non-executive directors representing at least one-third of the board.

Note: The issuer must comply with this rule by 31 December 2012.

Remuneration Committee

3.25 An issuer must establish a remuneration committee chaired by an independent non-executive director and comprising a majority of independent non-executive directors.

3.26 The board of directors must approve and provide written terms of reference for the remuneration committee which clearly establish its authority and duties.

3.27 If the issuer fails to set up a remuneration committee or at any time has failed to meet any of the other requirements in rules 3.25, 3.26 and 3.27, it must immediately publish an announcement containing the relevant details and reasons. Issuers must set up a remuneration committee and/or appoint appropriate members to it to meet the requirement(s) within three months after failing to meet them.

…

~~3.25 (1) The Code on Corporate Governance Practices contained in Appendix 14 sets out the principles of good corporate governance and two levels of recommendations: (a) code provisions; and (b) recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only.~~

~~*Note: Issuers may also devise their own code on corporate governance practices on such terms as they may consider appropriate.*~~

~~(2) Issuers must state whether they have complied with the code provisions set out in the Code on Corporate Governance Practices for the relevant accounting period in their interim reports (and summary interim reports, if any) and annual reports (and summary financial reports, if any).~~

~~*Note: For the relevant requirements governing preliminary results announcements, see paragraphs 45 and 46 of Appendix 16.*~~

~~(3) Where the issuer deviates from the code provisions set out in the Code on Corporate Governance Practices, the issuer must give considered reasons:~~

~~(a) in the case of annual reports (and summary financial reports), in the Corporate Governance Report which must be issued in accordance with Appendix 23; and~~

~~(b) in the case of interim reports (and summary interim reports), either:~~

~~(i) by giving considered reasons for each deviation; or~~

~~(ii) to the extent that it is reasonable and appropriate, by referring to the Corporate Governance Report in the immediately preceding annual report, and providing details of any changes together with considered reasons for any deviation not reported in that annual report. Such references must be clear and unambiguous and the interim report (or summary interim report) must not only contain a cross-reference without any discussion of the matter.~~

~~(4) In the case of the recommended best practices, issuers are encouraged, but are not required, to state whether they have complied with them and give considered reasons for any deviation.~~ *[Moved to Rule 13.89]*

Company Secretary

3.28 The issuer must appoint as its company secretary an individual who, by virtue of their academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging the functions of company secretary.

Notes: 1. The Exchange considers the following academic or professional qualifications to be acceptable:

(a) a Member of The Hong Kong Institute of Chartered Secretaries;

(b) a solicitor or barrister (as defined in the Legal Practitioners Ordinance);

(c) a professional accountant (as defined in the Professional Accountants Ordinance).

2. In assessing "relevant experience", the Exchange will consider the individual's:

(a) length of employment with the issuer and other issuers;

(b) familiarity with the Exchange Listing Rules;

(c) relevant training taken and/or to be taken in addition to the minimum requirement under rule 3.29; and

(d) professional qualifications in other jurisdictions.

3.29 In each financial year an issuer's company secretary must take no less than 15 hours of relevant professional training.

Note: A person who was a company secretary:

(a) on 1st January 2005 does not need to comply with rule 3.29 until 1st August 2011;

(b) between 1st January 2000 to 31st December 2004 does not need to comply with rule 3.29 until 1st August 2013;

(c) between 1st January 1995 to 31st December 1999 does not need to comply with rule 3.29 until 1st August 2015; and

(d) on or before 31st December 1994 does not need to comply with rule 3.29 until 1st August 2017.

Chapter 8

EQUITY SECURITIES

QUALIFICATIONS FOR LISTING

…

8.17 The issuer must appoint a company secretary who satisfies rule 3.28. ~~The secretary of the issuer must be a person who is ordinarily resident in Hong Kong and who has the requisite knowledge and experience to discharge the functions of secretary of the issuer and who:~~

~~(1) in the case of an issuer which was already listed on 1st December 1989 held the office of secretary of the issuer on that date;~~

~~(2) is an Ordinary Member of The Hong Kong Institute of Chartered Secretaries, a solicitor or barrister as defined in the Legal Practitioners Ordinance or a professional accountant; or~~

~~(3) is an individual who, by virtue of his academic or professional qualifications or relevant experience, is, in the opinion of the Exchange, capable of discharging those functions.~~

Chapter 13

GENERAL MATTERS RELEVANT TO THE ISSUER'S SECURITIES
Changes in issued share capital

13.25A (1) … ~~a listed~~ an issuer ~~shall~~ must, whenever there is a change in its issued share capital as a result of or in connection with any of the events referred to in rule 13.25A(2), submit … for publication on the Exchange's website a return in such form and containing such information …by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day next following the relevant event.

(2) The events referred to in rule 13.25A(1) are as follows:

(a) any of the following:

(i) …
…

(viii) exercise of an option under the issuer's ~~a~~ share option scheme by any of its directors ~~a director of the listed issuer or any of its subsidiaries~~;

(ix) exercise of an option other than under the issuer's ~~a~~ share option scheme by any of its directors ~~a director of the listed issuer or any of its subsidiaries~~;

(b) subject to rule 13.25A(3), any of the following:

(i) exercise of an option under a share option scheme other than by a director of the ~~listed~~ issuer ~~or any of its subsidiaries~~;

(ii) exercise of an option other than under a share option scheme not by a director of the ~~listed~~ issuer ~~or any of its subsidiaries~~;

Meetings of Shareholders

13.39 (1) …

(4) Any vote of shareholders at a general meeting must be taken by poll except where the chairman, in good faith, decides to allow a resolution which relates purely to a procedural or administrative matter to be voted on by a show of hands. ~~and the~~ The issuer must announce the results of the poll in the manner prescribed under rule 13.39(5).

Note: Procedural and administrative matters are those that:

(i) are not on the agenda of the general meeting or in any supplementary circular to members; and

(ii) which relate to the chairman's duties to maintain the orderly conduct of the meeting and/or allow the business of the meeting to be properly and effectively dealt with, whilst allowing all shareholders a reasonable opportunity to express their views.

(5) The issuer ~~shall~~ must announce the meeting's poll results ~~(including (i) the total number of shares entitling the holder to attend and vote for against the resolution at the meeting, (ii) the total number of shares entitling the holder to attend and vote only against the resolution at the meeting, (iii) the number of shares represented by votes for *and* against the relevant resolution) by way of an announcement which is published in accordance with rule 2.07C~~ as soon as possible, but in any event ~~not later than~~ at least ~~the time that is~~ 30 minutes before the earlier of either the commencement of the morning trading session or any pre-opening session on the business day ~~following~~ after the meeting.

The poll results announcement must include the number of:

(a) shares entitling the holder to attend and vote on a resolution at the meeting;

(b) shares entitling the holder to attend and abstain from voting in favour as set out in rule 13.40;

(c) shares of holders that are required under the Listing Rules to abstain from voting; and

(d) shares actually voted for or against a resolution.

The issuer ~~shall~~ must appoint its auditors, share registrar or external accountants who are qualified to serve as its auditors ~~for the issuer~~ as scrutineer for the vote-taking and state the identity of the scrutineer in the announcement. The issuer ~~shall~~ must ~~confirm~~ state in the announcement whether or not any parties that have stated their intention in the circular to vote against the relevant resolution or to abstain have done so at the general meeting.

Voting of directors at board meetings

13.44 Subject to the exceptions set out in paragraphs (1), (2), (4) and (5) of Note 1 to Appendix 3, a director of the issuer shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest nor shall he be counted in the quorum present at the meeting.

NOTIFICATION
Changes

13.51 An issuer ~~shall~~ must ~~inform the Exchange immediately of any decision made and~~ publish an announcement ~~in accordance with rule 2.07C~~ as soon as practicable in regard to: -

…

(2) …

…

Where a new director, ~~or~~ supervisor or chief executive officer is appointed or the resignation, ~~or~~ re-designation, retirement or removal of a director, ~~or~~ supervisor or chief executive officer takes effect, ~~the Exchange must be informed immediately thereafter. The~~ the issuer must ~~simultaneously make arrangements to ensure that~~ publish an announcement of the change ~~appointment, resignation re-designation of the director or supervisor is published in accordance with rule 2.07C~~ as soon as practicable~~. The issuer~~ ~~shall~~ and include the following details ~~of any newly appointed or re-designated director, or supervisor~~ in the announcement ~~of his appointment or re-designation~~: -

…

(o) where he has, in connection with the formation or management of any enterprise, company, partnership or unincorporated business enterprise or institution, been adjudged by a Court or arbitral body civilly liable for any fraud, breach of duty or other misconduct by him involving dishonesty ~~towards such enterprise, company, partnership or unincorporated business enterprise or institution or towards any of its members or partners~~, full particulars of ~~such~~ the judgement;

…

(x) …

The issuer ~~shall~~ must also disclose in the announcement of resignation or removal of a director, ~~or~~ supervisor or chief executive officer the reasons given by or to him ~~the director, or supervisor~~ for his resignation or removal (including, but not limited to, any information relating to his disagreement with the board and a statement ~~as to~~

whether or not there are any matters that need to be brought to the attention of holders of securities of the issuer).

13.51B (3) …

(a) ~~in respect of~~ for rule 13.51(2)(a), an issuer need not disclose the age of the director or supervisor in its interim reports;

(b) ~~in respect of~~ for rule 13.51(2)(d), an issuer need not disclose the length of service of a director or supervisor;

(c) ~~in respect of~~ for rule 13.51(2)(h), an issuer need not disclose any sanction imposed on it by the Exchange; and

(d) ~~in respect of~~ for rule 13.51(2)(k), an issuer need not disclose the particulars of any unsatisfied judgments or court orders of continuing effect until the relevant judgment or court order becomes final.

13.51D The issuer must publish the procedures for shareholders to propose a person for election as a director on its website.

Appointment and removal of auditors prior to expiration of his term of office

13.88 The issuer must at each annual general meeting appoint auditors to hold office from the conclusion of that meeting until the next annual general meeting. The issuer must not remove its auditor before the end of the auditor's term of office without first obtaining shareholders' approval at a general meeting. An issuer must send a circular proposing the removal of the auditor to shareholders with any written representations from the auditor, not less than 10 business days before the general meeting. An issuer must allow the auditor to attend the general meeting and make verbal representations to shareholders at the general meeting.

Code on Corporate Governance Practices

13.89 (1) The Code on Corporate Governance Practices in Appendix 14 sets out the principles of good corporate governance and two levels of recommendations: (a) code provisions; and (b) recommended best practices. Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only.

Note: Issuers may also devise their own code on corporate governance practices on such terms as they may consider appropriate.

(2) Issuers must state whether they have complied with the code provisions set out in the Code on Corporate Governance Practices for the relevant accounting period in their interim reports (and summary interim reports, if any) and annual reports (and summary financial reports, if any).

Note: For the requirements governing preliminary results announcements, see paragraphs 45 and 46 of Appendix 16.

(3) Where the issuer deviates from the code provisions, it must give considered reasons:

(a) for annual reports (and summary financial reports), in the Corporate Governance Report under Appendix 14; and

(b) for interim reports (and summary interim reports), either:

(i) by giving considered reasons for each deviation; or

(ii) to the extent that it is reasonable and appropriate, by referring to the Corporate Governance Report in the immediately preceding annual report, and providing details of any changes together with considered reasons for any deviation not reported in that annual report. The references must be clear and unambiguous and the interim report (or summary interim report) must not contain only a cross-reference without any discussion of the matter.

(4) For the recommended best practices, issuers are encouraged, but are not required, to state whether they have complied with them and give considered reasons for any deviation.

Publication of issuers' constitutional documents

13.90 An issuer must publish on its own website and on the HKEx website, an up to date consolidated version of its memorandum and articles of association or equivalent constitutional document.

Chapter 14

Major transaction circulars

14.66 A circular relating to a major transaction must contain the following:—

…

(8) information as to the competing interests (if any) of each of the directors and any proposed director of the ~~listed~~ issuer and his/her respective associates (as if each of them were treated as a controlling shareholder under rule 8.10~~would be required to be disclosed under rule 8.10 if each of them were a controlling shareholder~~);

Chapter 14A

Content of circular
General principles

14A.59 The circular must contain at least:

…

(11) information as to the competing interests (if any) of each of the directors and any proposed director of the ~~listed~~ issuer and his/her respective associates (as if each of them were treated as a controlling shareholder under rule 8.10 ~~would be required to be disclosed under rule 8.10 if each of them were a controlling shareholder~~);

Chapter 19A

EQUITY SECURITIES

ISSUERS INCORPORATED IN THE PEOPLE'S REPUBLIC OF CHINA

~~19A.16 The secretary of a PRC issuer need not be ordinarily resident in Hong Kong, provided such person can meet the other requirements of rule 8.17.~~

~~*Note: Where the secretary of a PRC issuer does not possess a qualification as required by rule 8.17(2), the PRC issuer will have to satisfy the Exchange the requirement under rule 8.17(3). In assessing the "relevant experience" of person under rule 8.17(3), the Exchange will normally have regard to, among other considerations, period of his employment with the PRC issuer and his familiarity with the Exchange Listing Rules. The Exchange would expect submission from the sponsor demonstrating that (a) sufficient time and efforts have been spent on training the appointee by way of induction courses or other means which are satisfactory to the Exchange; and (b) the sponsor is satisfi ed that the appointee will be able to discharge a secretary's duties.*~~

Appendix 16

DISCLOSURE OF FINANCIAL INFORMATION

…

24. An ~~listed~~ issuer ~~shall~~ must disclose in its financial statements details of director's and past director's emoluments, ~~on a named basis~~by name as follows:–

…

24.5 References to "director" in paragraph 24 include a chief executive officer who is not a director.

…

25. An ~~listed~~ issuer ~~shall~~ must disclose in its financial statements information in respect of the five highest paid individuals during the financial year. For this purpose~~s~~ amounts paid or payable by way of commissions on sales generated by the individual are to be ignored. Where all five of these individuals are directors ~~of the listed issuer~~ and the information required ~~to be disclosed~~ by this paragraph has been disclosed in the emoluments of directors ~~as required by paragraph 24 above~~, ~~a statement of this fact shall be made~~ this must be stated and no additional disclosure is required. Where the details of one or more of the individuals whose emoluments were the highest have not been included in the emoluments of directors, the following information ~~shall~~ must be disclosed:–

(1) the aggregate of basic salaries, housing allowances, other allowances and benefits in kind for the financial year;

(2) the aggregate of contributions to pension schemes for the financial year;

(3) the aggregate of bonuses paid or receivable which are discretionary or are based on the ~~listed~~ issuer's, the group's or any member of the group's performance (excluding amounts disclosed in (4) and (5) below) for the financial year;

(4) the aggregate of amounts paid during the financial year or receivable as an inducement to join or upon joining the ~~listed~~ issuer;

(5) the aggregate of compensation paid during the financial year or receivable for the loss of any office in connection with the management of the affairs of any member of the group distinguishing between contractual payments and other payments (excluding amounts disclosed in (1) to (3) above); and

(6) an analysis showing the number of individuals whose remuneration (being amounts paid under (1) to (5) above) fell within bands from HK$nil up to HK$1,000,000 or into higher bands (where the higher limit of the band is an exact multiple of HK$500,000 and the range of the band is HK$499,999).

25.1 It is not necessary to disclose the identity of the highest paid individuals, unless any of them are directors of the ~~listed~~ issuer.

25A. An issuer must separately disclose, in its financial statements, the emoluments of all senior management members during the financial year. For this purpose amounts paid or payable by way of commissions on sales generated by the individual must be included. The individuals who constitute senior management must be the same as those whose biographical details are disclosed under paragraph 12. Senior management emoluments (including the five highest paid employees) may be disclosed by band as described in paragraph 25(6) and not by name.

…

34. An ~~listed~~ issuer ~~shall~~ must include, in respect of the group, a separate Corporate Governance Report prepared by the board ~~of directors~~ on its corporate governance practices. The report must, as a minimum, contain the information required under paragraphs G to P of Appendix ~~23~~ 14 regarding the accounting period covered by the annual report. To the extent that it is reasonable and appropriate, the issuer may incorporate by reference information in its annual report into the Corporate Governance Report. Any such references must be clear and unambiguous and the Corporate Governance Report must not ~~only~~ contain only a cross-reference without any discussion of the matter.

…

Summary financial reports

50. Summary financial reports of ~~listed~~ issuers ~~shall~~ must comply with the disclosure requirements set out in the Companies (Summary Financial Reports of Listed Companies) Regulation. An ~~listed~~ issuer ~~shall~~ must also disclose the following information in its summary financial report:–

…

(2) a separate Corporate Governance Report prepared by the board ~~of directors~~ on its corporate governance practices. The report must, as a minimum, contain the information required under paragraphs G to P of Appendix ~~23~~ 14 regarding the accounting period covered by the annual report. To the extent that it is reasonable and appropriate, this Corporate Governance Report may take the form of a summary of the Corporate Governance Report ~~contained~~ in the annual report and may also incorporate information by reference to its annual report. Any such references must be clear and unambiguous and the summary must not ~~only~~ contain only a cross-reference without any discussion of the matter. The summary must contain, as a minimum, a narrative statement indicating overall compliance with and highlighting any deviation from the ~~provisions of the~~ Code on Corporate Governance Practices ~~contained~~ in Appendix 14.

…

Recommended additional disclosure

52. ~~Listed i~~Issuers are encouraged to disclose the following additional commentary on management discussion and analysis in their interim and annual reports:

…

Note: Issuers should also note the recommended disclosures set out in paragraphs Q to T ~~3~~ of Appendix ~~23~~ 14.

APPENDIX II: PROPOSED AMENDMENTS TO THE CODE AND CORPORATE GOVERNANCE REPORT

(Unless otherwise specified, set out below are the draft Main Board Rule amendments. The Exchange proposes to make equivalent amendments to the GEM Rules.)

The marked-up parts represent the proposed amendments to the Main Board Rules.

Appendix 14

CODE ON CORPORATE GOVERNANCE PRACTICES AND CORPORATE GOVERNANCE REPORT

The Code

This Code ~~on Corporate Governance Practices~~ sets out the principles of good corporate governance, and two levels of recommendations: (a) code provisions; and (b) recommended best practices.

Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only. Issuers may also devise their own code on corporate governance practices on ~~such~~ the terms ~~as~~ they ~~may~~ consider appropriate.

Issuers must state whether they have complied with the code provisions ~~set out in this Code~~ for the relevant accounting period in their interim reports (and summary interim reports, if any) and annual reports (and summary financial reports, if any).

Every issuer must carefully review each code provision ~~set out in this Code~~ and, where ~~the issuer~~ it deviates from any of them ~~the code provisions~~, ~~the issuer~~ it must give considered reasons:

(a) in ~~the case of~~ annual reports (and summary financial reports), in the Corporate Governance Report ~~which must be issued in accordance with Appendix 23~~; and

(b) in ~~the case of~~ interim reports (and summary interim reports), either:

(i) by giving considered reasons for each deviation; or

(ii) to the extent that it is reasonable and appropriate, by referring to the Corporate Governance Report in the ~~immediately~~ preceding annual report, and providing details of any changes ~~together~~ with considered reasons for any deviation not reported in that annual report. ~~Such~~ The references must be clear and unambiguous and the interim report (or summary interim report) must not ~~only~~ contain only a cross-reference without any discussion of the matter.

~~*In the case of the recommended best practices, issuers*~~ *Issuers are encouraged, but* ~~*are*~~ *not required, to state whether they have complied with* ~~*them*~~ *the recommended best practices and give considered reasons for any deviation.*

Corporate Governance Report

~~*1. Listed issuers*~~ *Issuers* ~~*shall*~~ *must include a* ~~*report on corporate governance practices (the "*~~*Corporate Governance Report*~~*")*~~ *prepared by the board of directors in their summary financial reports (if any)* ~~*pursuant to*~~ *under paragraph 50 of Appendix 16 and annual reports* ~~*pursuant to*~~ *under paragraph 34 of Appendix 16. The Corporate Governance Report* ~~*shall*~~ *must contain all the information set out in* ~~*paragraph 2*~~ *Paragraphs G to P of this Appendix. Any failure to do so will be regarded as a breach of the Exchange Listing Rules.*

To ~~*the extent that it is*~~ *a reasonable and appropriate extent, the Corporate Governance Report included in* ~~*a listed*~~ *an issuer's summary financial report may* ~~*take the form of*~~ *be a summary of the Corporate Governance Report contained in the annual report and may also incorporate information by reference to its annual report.* ~~*Any such*~~ *The references must be clear and unambiguous and the summary must not only contain a cross-reference without any discussion of the matter. The summary must contain, as a minimum, a narrative statement indicating overall compliance with and highlighting any deviation from the code provisions* ~~*of the Code on Corporate Governance Practices contained in Appendix 14 (the "Code")*~~*.*

~~*Listed issuers*~~ *Issuers are also encouraged to disclose information set out in* ~~*paragraph 3*~~ *Paragraphs Q to T of this Appendix in their Corporate Governance Report.*

PRINCIPLES OF GOOD GOVERNANCE, CODE PROVISIONS AND RECOMMENDED BEST PRACTICES

A. DIRECTORS

A.1 The Board

Principle

An issuer should be headed by an effective board which should assume responsibility for its leadership and control ~~of the issuer~~ and be collectively responsible for promoting ~~the~~ its success ~~of the issuer~~ by directing and supervising ~~the issuer's~~ its affairs. Directors should take decisions objectively in the best interests of the issuer.

Code Provisions

A.1.1 The board should meet regularly and board meetings should be held at least four times a year at approximately quarterly intervals. It is expected ~~that such~~ regular board meetings will normally involve the active participation, either in person or through ~~other~~ electronic means of communication, of a majority of directors entitled to be present. ~~Accordingly~~So, a regular meeting does not include ~~the practice of~~ obtaining board consent through ~~the circulation of~~ circulating written resolutions.

A.1.2 Arrangements should be in place to ensure that all directors are given an opportunity to include matters in the agenda for regular board meetings.

A.1.3 Notice of at least 14 days should be given of a regular board meeting to give all directors an opportunity to attend. For all other board meetings, reasonable notice should be given.

~~A.1.4 All directors should have access to the advice and services of the company secretary with a view to ensuring that board procedures, and all applicable rules and regulations, are followed.~~ *[Moved to F.1.4]*

A.1.~~5~~4 Minutes of board meetings and meetings of board committees should be kept by a duly appointed secretary of the meeting and ~~such minutes~~ should be open for inspection at any reasonable time on reasonable notice by any director.

A.1.~~6~~5 Minutes of board meetings and meetings of board committees should record in sufficient detail the matters considered ~~by the board~~ and decisions reached, including any concerns raised by directors or dissenting views expressed. Draft and final versions of minutes ~~of board meetings~~ should be sent to all directors for their comment and records respectively, ~~in both cases~~ within a reasonable time after the board meeting is held.

A.1.~~7~~6 There should be a procedure agreed by the board to enable directors, upon reasonable request, to seek independent professional advice in appropriate circumstances, at the issuer's expense. The board should resolve to provide

separate independent professional advice to directors to assist them ~~the relevant director or directors to discharge~~ perform ~~his/~~their duties to the issuer.

A.1.~~8~~7 If a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board which the board has determined to be material, the matter should ~~not~~ be dealt with by a physical board meeting rather than a written resolution ~~circulation or by a committee (except an appropriate board committee set up for that purpose pursuant to a resolution passed in a board meeting) but a board meeting should be held~~. Independent non-executive directors who, and whose associates, have no material interest in the transaction should be present at ~~such~~ that board meeting.

Notes~~:~~ ~~1 Directors are reminded of the requirement under rule 13.44 that they must abstain from voting on any board resolution in which they or any of their associates have a material interest and that they shall not be counted in the quorum present at the board meeting. The existing exceptions to the general voting prohibition are currently set out in note 1 to Appendix 3.~~ A director's attendance by electronic means including telephonic or videoconferencing may be counted as attendance at a physical board meeting.

~~2 Such exceptions to the general voting prohibition should also be taken into account when considering whether a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board. If the relevant exceptions apply, a regular board meeting need not be held. For this purpose, please refer to A.1.1 for the meaning of a regular board meeting.~~

~~**Recommended Best Practices**~~

A.1.~~9~~8 An issuer should arrange appropriate and adequate general insurance cover in respect of legal action against its directors.

~~A.1.10 Board committees should adopt, so far as practicable, the principles, procedures and arrangements set out in A.1.1 to A.1.8.~~

A.2 Chairman and Chief Executive Officer

Principle

There are two key aspects of the management of every issuer - the management of the board and the day-to-day management of ~~the issuer's~~ business. There should be a clear division of these responsibilities ~~at the board level~~ to ensure a balance of power and authority, so that power is not concentrated in any one individual.

Code Provisions

A.2.1 The roles of chairman and chief executive officer should be separate and should not be performed by the same individual. The division of

responsibilities between the chairman and chief executive officer should be clearly established and set out in writing.

~~Note: Under paragraphs 2(c)(vii) and 2(d) of Appendix 23, issuers must disclose in their Corporate Governance Report the identity of the chairman and the chief executive officer and whether these two roles are segregated and the nature of any relationship (including financial, business, family or other material/relevant relationship(s)), if any, among members of the board and in particular, between the chairman and the chief executive officer.~~

A.2.2 The chairman should ensure that all directors are properly briefed on issues arising at board meetings.

A.2.3 The chairman should be responsible for ensuring that directors receive, in a timely manner, adequate information~~,~~ which must be accurate, clear, complete and reliable~~, in a timely manner~~.

~~Recommended Best Practices~~

A.2.4 One of the important roles of the chairman is to provide leadership for the board. The chairman should ensure that the board works effectively and ~~discharges~~ performs its responsibilities, and that all key and appropriate issues are discussed by ~~the board~~ it in a timely manner. The chairman should be primarily responsible for drawing up and approving the agenda for each board meeting. He should take ~~taking~~ into account, where appropriate, any matters proposed by the other directors for inclusion in the agenda. The chairman may delegate ~~such~~ this responsibility to a designated director or the company secretary.

A.2.5 The chairman should take primary responsibility for ensuring that good corporate governance practices and procedures are established.

A.2.6 The chairman should encourage all directors to make a full and active contribution to the board's affairs and take the lead to ensure that ~~the board~~ it acts in the best interests of the issuer. The chairman should encourage directors with different views to voice their concerns, allow sufficient time for discussion of issues and ensure that board decisions fairly reflect board consensus.

A.2.7 The chairman should at least annually hold separate meetings with (1) only the independent non-executive directors and (2) only the non-executive directors. ~~(including independent non-executive directors) without the executive directors present.~~

A.2.8 The chairman should ensure that appropriate steps are taken to provide effective communication with shareholders and that their views ~~of shareholders~~ are communicated to the board as a whole.

A.2.9 The chairman should promote a culture of openness and debate by ~~facilitate~~ facilitating the effective contribution of non-executive directors in particular and ~~ensure~~ ensuring constructive relations between executive and non-executive directors.

A.3 Board composition

Principle

The board should have a balance of skills and experience appropriate for the requirements of the issuer's business ~~of the issuer~~. ~~The board~~ It should ensure that changes to its composition can be managed without undue disruption. ~~The board~~ It should include a balanced composition of executive and non-executive directors (including independent non-executive directors) so that there is a strong independent element on the board, which can effectively exercise independent judgement. Non-executive directors should be of sufficient calibre and number for their views to carry weight.

~~*Notes: 1 Under rule 3.10, every board of directors of a listed issuer must include at least three independent non-executive directors.*~~

~~*2 Guidelines on independence of independent non-executive directors are set out in rule 3.13.*~~

Code Provisions

A.3.1 The independent non-executive directors should be ~~expressly~~ identified ~~as such~~ in all corporate communications that disclose the names of directors ~~of the issuer~~.

~~*Note: Under paragraph 2(c)(i) of Appendix 23, issuers must disclose the composition of the board, by category of directors, including names of chairman, executive directors, non-executive directors and independent non-executive directors in the Corporate Governance Report.*~~

~~**Recommended Best Practices**~~

~~A.3.2 An issuer should appoint independent non-executive directors representing at least one-third of the board.~~

A.3.~~3~~2 An issuer should maintain on its website and on the HKEx website an updated list of its directors identifying their role and function and whether they are independent non-executive directors.

A.4 Appointments, re-election and removal

Principle

There should be a formal, considered and transparent procedure for the appointment of new directors ~~to the board~~. There should be plans in place for orderly succession for appointments ~~to the board~~. All directors should be subject to re-election at regular intervals. An issuer must explain the reasons for the resignation or removal of any director.

Code Provisions

A.4.1 Non-executive directors should be appointed for a specific term, subject to re-election.

~~*Note: Under paragraph 2(e) of Appendix 23, issuers must disclose the term of appointment of non-executive directors in the Corporate Governance Report.*~~

A.4.2 All directors appointed to fill a casual vacancy should be subject to election by shareholders at the first general meeting after ~~their~~ appointment. Every director, including those appointed for a specific term, should be subject to retirement by rotation at least once every three years.

~~*Notes: 1 The names of all directors submitted for election or re-election must be accompanied by the same biographical details as required for newly appointed directors set out in rule 13.51(2) (including other directorships held in listed public companies in the last three years and other major appointments) to enable shareholders to make an informed decision on their election.*~~

~~*2 If a director resigns or is removed from office, an issuer must comply with the disclosure requirements in rule 13.51(2) and include in its announcement about the director's resignation or removal the reasons given by the director for his resignation (including but not limited to information relating to a relevant director's disagreement with the issuer, if any, and a statement confirming whether or not there are any matters that need to be brought to the attention of shareholders).*~~

~~**Recommended Best Practices**~~

A.4.3 Serving more than ~~nine~~ 9 years could be relevant to the determination of a non-executive director's independence. If an independent non-executive director serves more than 9 years, ~~any~~ his further appointment ~~of such the independent non-executive director~~ should be subject to a separate resolution to be approved by shareholders. ~~The board should set out to shareholders in the~~ The papers to shareholders accompanying ~~a~~ that resolution ~~to elect such an independent non-executive director~~ should include the reasons ~~they~~ why the

board believes ~~that the individual~~ he is still ~~continues to be~~ independent and ~~why he~~ should be re-elected.

A.5 Nomination Committee

A.~~4.4~~5.1 Issuers should establish a nomination committee which is chaired by an independent non-executive director and comprising a~~. A~~ majority of ~~the members of the nomination committee should be~~ independent non-executive directors.

A.~~4.5~~5.2 The nomination committee should be established with specific written terms of reference which deal clearly with ~~the committee's~~ its authority and duties. ~~It is recommended that the nomination committee~~ It should ~~discharge~~ perform the following duties:-

(a) review the structure, size and composition (including the skills, knowledge and experience) of the board ~~on a regular basis~~ at least annually and make recommendations ~~to the board regarding~~ on any proposed changes to the board to implement the issuer's corporate strategy;

(b) identify individuals suitably qualified to become board members and select or make recommendations to the board on the selection of individuals nominated for directorships;

(c) assess the independence of independent non-executive directors; ~~and~~

(d) make recommendations to the board on ~~relevant matters relating to~~ the appointment or re-appointment of directors and succession planning for directors, in particular the chairman and the chief executive officer~~.~~;

(e) regularly review the time required from a director to perform his responsibilities to the issuer, and whether he is spending sufficient time as required; and

(f) review the non-executive directors' annual confirmations that they have spent sufficient time on the issuer's business.

A.~~4.6~~5.3 The nomination committee should make available its terms of reference explaining its role and the authority delegated to it by the board by including them on the HKEx website and issuer's website.

~~*Notes: 1 This requirement could be met by making it available on request and by including the information on the issuer's website.*~~

~~*2 Under paragraph 2(g)(i) of Appendix 23, issuers must explain the role of the nomination committee (if any) in the Corporate Governance Report.*~~

A.~~4.7~~5.4 Issuers should provide the ~~The~~ nomination committee ~~should be provided with~~ sufficient resources to ~~discharge~~ perform its duties. Where necessary, the nomination committee should seek independent professional advice, at the issuer's expense, to perform its responsibilities.

A.~~4.8~~5.5 Where the board proposes a resolution to elect an individual as an independent non-executive director at the general meeting, it should set out in the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting why they believe he ~~the individual~~ should be elected and the reasons why they consider him ~~the individual~~ to be independent.

A.~~5~~6 Responsibilities of directors

Principle

Every director ~~is required to~~ must always know ~~keep abreast of~~ his responsibilities as a director of an issuer and ~~of the~~ its conduct, business activities and development ~~of that issuer~~. Given the essential unitary nature of the board, non-executive directors have the same duties of care and skill and fiduciary duties as executive directors.

~~*Note: These duties are summarised in "Non-statutory Guidelines of Directors' Duties" issued by the Companies Registry in January 2004. In determining whether a director has met the requisite standard of care, skill and diligence expected of him, courts will generally have regard to a number of factors. These include the functions that are to be performed by the director concerned, whether the director is a full-time executive director or a part-time non-executive director and the professional skills and knowledge of the director concerned.*~~ *[Moved under Rule 3.08]*

Code Provisions

A.~~5~~6.1 Every newly appointed director of an issuer should receive a comprehensive, formal and tailored induction on ~~the first occasion of his~~ appointment., ~~and subsequently such~~ Subsequently he should receive any briefing and professional development ~~as is~~ necessary, to ensure that he has a proper understanding of the issuer's operations and business ~~of the issuer~~ and ~~that he~~ is fully aware of his responsibilities under statute and common law, the Exchange Listing Rules, ~~applicable~~ legal ~~requirements~~ and other regulatory requirements and the issuer's business and governance policies ~~of the issuer~~.

A.~~5~~6.2 The functions of non-executive directors should include ~~but should not be limited to the following~~:

(a) participating in board meetings ~~of the issuer~~ to bring an independent judgement to bear on issues of strategy, policy, performance, accountability, resources, key appointments and standards of conduct;

(b) taking the lead where potential conflicts of interests arise;

(c) serving on the audit, remuneration, nomination and other governance committees, if invited; and

(d) scrutinising the issuer's performance in achieving agreed corporate goals and objectives, and monitoring ~~the~~ performance reporting ~~of performance~~.

A.~~5~~6.3 Every director should ensure that he can give sufficient time and attention to the issuer's affairs ~~of the issuer~~ and should ~~not accept the appointment if he cannot do so~~ limit the number of his other professional commitments (in particular any directorships held in other companies) so that the proper performance of his duties is not compromised. The director should also acknowledge to the issuer that he will have sufficient time to meet his obligations and the issuer's expectations. A non-executive director should confirm to the nomination committee annually that he has spent sufficient time on the issuer's business.

A.~~5~~6.4 ~~Directors must comply with their obligations under the Model Code set out in Appendix 10 and, in addition, the~~ The board should establish written guidelines ~~on~~ no less exacting ~~terms~~ than the Model Code for relevant employees in respect of their dealings in the issuer's securities ~~of the issuer~~. ~~For this purpose,~~ "~~r~~Relevant employee" includes any employee ~~of the issuer~~ or a director or employee of a subsidiary or holding company ~~of the issuer~~ who, because of ~~such~~ his office or employment, is likely to be in possession of unpublished price sensitive information in relation to the issuer or its securities.

~~Recommended Best Practices~~

A.~~5~~6.5 All directors should participate in ~~a programme of~~ continuous professional development of at least 8 hours per financial year to develop and refresh their knowledge and skills. This is to ~~help~~ ensure that their contribution to the board remains informed and relevant. The issuer should be responsible for arranging and funding ~~a~~ suitable ~~development programme~~ training, placing an appropriate emphasis on the roles, functions and duties of a listed company director.

Note: If a person holds multiple directorships, only 8 hours of training in total, is required.

A.~~5~~6.6 Each director should disclose to the issuer at the time of his appointment, and ~~on a periodic basis~~ in a timely manner for any change, the number and nature of offices held in public companies or organisations and other significant commitments.~~, with the~~ The identity of the public companies or organisations and an indication of the time involved should also be disclosed. The board should determine for itself how frequently ~~such~~ this disclosure should be made.

A.~~5~~6.7 Independent non-executive directors and other non-executive ~~Non-executive~~ directors, as equal board members, should give the board and any committees on which they serve ~~such as the audit, remuneration or nomination committees~~ the benefit of their skills, expertise and varied backgrounds and qualifications

through regular attendance and active participation. They should also attend general meetings and develop a balanced understanding of the views of shareholders.

A.~~5~~6.8 Independent non-executive directors and other non-executive ~~Non-executive~~ directors should make a positive contribution to the development of the issuer's strategy and policies through independent, constructive and informed comments.

A.~~6~~7 Supply of and access to information

Principle

Directors should be provided in a timely manner with appropriate information in the ~~such~~ form and ~~of such~~ quality ~~as will~~ to enable them to make an informed decision and ~~to discharge~~ perform their duties and responsibilities ~~as directors of an issuer~~.

Code Provisions

A.~~6~~7.1 ~~In respect of~~ For regular board meetings, and ~~so~~ as far as practicable in all other cases, an agenda and accompanying board papers should be sent, in full, to all directors. These should be sent in a timely manner and at least 3 days before the intended date of a board or board committee meeting (or such other period as agreed).

A.~~6~~7.2 Management has an obligation to supply the board and its committees with adequate information, in a timely manner, to enable it to make informed decisions. The information supplied must be complete and reliable. To fulfil his duties properly, a director may not, in all circumstances, be able to rely purely on ~~what is volunteered~~ information provided voluntarily by management and he may need to make further enquiries. ~~may be required.~~ Where any director requires more information than is volunteered by management, he should make further enquiries where necessary. ~~The~~ So, the board and ~~each~~ individual directors should have separate and independent access to the issuer's senior management.

Notes: 1 The information provided should include background or explanatory information relating to matters to be brought before the board, copies of disclosure documents, budgets, forecasts and monthly and other relevant internal financial statements. In respect of budgets, any material variance between the projections and actual results must also be disclosed and explained.

2 ~~For the purpose of~~ In this Code, "senior management" ~~should~~ refers to the same ~~category of~~ persons ~~as~~ referred to in the issuer's annual report and ~~is~~ required to be disclosed under paragraph 12 of Appendix 16.

A.~~6~~7.3 All directors are entitled to have access to board papers and related materials. ~~Such~~ These papers and related materials should be ~~prepared~~ in ~~such~~ a form

and quality ~~as will~~ sufficient to enable the board to make ~~an~~ informed decisions on matters placed before it. ~~Where queries~~ Queries ~~are~~ raised by directors~~, steps must be taken to respond as promptly and fully as possible~~ should receive a prompt and full response, if possible.

B. REMUNERATION OF DIRECTORS AND SENIOR MANAGEMENT AND BOARD EVALUATION

B.1 The level and make-up of remuneration and disclosure

Principle

An issuer should disclose ~~information relating to~~ its directors' remuneration policy and other remuneration related matters. ~~There should be a formal and transparent~~ The procedure for setting policy on executive directors' remuneration and ~~for fixing the~~ all directors' remuneration packages should be formal and transparent. ~~for all directors. Levels of remuneration~~ Remuneration levels should be sufficient to attract and retain ~~the~~ directors ~~needed~~ to run the company successfully~~, but companies should avoid~~ without paying more than ~~is~~ necessary ~~for this purpose~~. No director should be involved in deciding his own remuneration.

~~*Notes: 1 Under paragraph 24B of Appendix 16, issuers are required to give a Genera l description of the emolument policy and long-term incentive schemes of the group as well as the basis of determining the emolument payable to their directors.*~~

~~*2 Under paragraph 24 of Appendix 16, directors' fees and any other reimbursement or emolument payable to a director must be disclosed in full in the annual reports and accounts of the issuer on an individual and named basis.*~~

Code Provisions

B.1.1 ~~Issuers should establish a remuneration committee with specific written terms of reference which deal clearly with its authority and duties. A majority of the members of the remuneration committee should be independent non-executive directors.~~

~~B.1.2~~ The remuneration committee should consult the chairman and/or chief executive officer about their remuneration proposals ~~relating to the remuneration of~~ for other executive directors. ~~and~~ The remuneration committee should have access to independent professional advice if ~~considered~~ necessary.

B.1.~~3~~2 The remuneration committee's terms of reference ~~of the remuneration committee~~ should include, as a minimum~~, the following specific duties~~: -

(a) to make recommendations to the board on the issuer's policy and structure for all ~~remuneration of~~ directors and senior management

remuneration and on the establishment of a formal and transparent procedure for developing remuneration policy ~~*on such remuneration*~~;

~~*Note: For the purpose of this Code, "senior management" should refer to the same category of persons as referred to in the issuer's annual report and is required to be disclosed under paragraph 12 of Appendix 16.*~~

(b) to review and approve the management's remuneration proposals with reference to the board's corporate goals and objectives;

~~(b)~~(c) either:

(i) to determine, ~~have the~~ with delegated responsibility, ~~to determine the specific remuneration packages of all~~ individual executive ~~directors~~ director's and senior ~~management~~ management's remuneration packages; or

(ii) to make recommendations to the board on individual executive director's and senior management's remuneration packages.

This should~~, including~~ include benefits in kind, pension rights and compensation payments, including any compensation payable for loss or termination of their office or appointment~~,~~;

(d) to~~, and~~ make recommendations to the board ~~of~~ on the remuneration of non-executive directors~~.~~;

(e) ~~The remuneration committee should~~ to consider ~~factors such as~~ salaries paid by comparable companies, time commitment and responsibilities ~~of the directors,~~ and employment conditions elsewhere in the group ~~and desirability of performance-based remuneration~~;

~~(c) to review and approve performance-based remuneration by reference to corporate goals and objectives resolved by the board from time to time;~~

~~(d)~~(f) to review and approve ~~the~~ compensation payable to executive directors and senior management ~~in connection with~~ for any loss or termination of ~~their~~ office or appointment to ensure that ~~such compensation~~ it is ~~determined in accordance~~ consistent with ~~relevant~~ contractual terms and ~~that such compensation is~~ otherwise fair and not excessive ~~for the issuer~~;

~~*Note: Please refer to the Note to B.1.3(ab) of this Code for the definition of "senior management".*~~

~~(e)~~(g) to review and approve compensation arrangements relating to dismissal or removal of directors for misconduct to ensure that they ~~such arrangements are determined in accordance~~ consistent with

~~relevant~~ contractual terms and ~~that any compensation payment is~~ are otherwise reasonable and appropriate; and

~~(f)~~(h) to ensure that no director or any of his associates is involved in deciding his own remuneration.

~~*Note: The remuneration committee shall advise shareholders on how to vote with respect to any service contracts of directors that require shareholders' approval under rule 13.68.*~~

B.1.~~4~~3 The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board by including them on the HKEx website and the issuer's website.

~~*Notes: 1 This requirement could be met by making it available on request and by including the information on the issuer's website.*~~

~~*2 Under paragraph 2(f)(i) of Appendix 23, issuers must explain the role of the remuneration committee (if any) in the Corporate Governance Report.*~~

B.1.~~5~~4 The remuneration committee should be provided with sufficient resources to ~~discharge~~ perform its duties.

~~**Recommended Best Practices**~~

B.1.~~6~~5 A significant proportion of executive directors' remuneration should ~~be structured so as to~~ link rewards to corporate and individual performance.

B.1.~~8~~6 If B.1.2(c)(ii) is adopted,~~Where~~ where the board resolves to approve any remuneration or compensation arrangements with which the remuneration committee disagrees ~~has previously resolved not to approve~~, the board ~~must~~ should disclose the reasons for its resolution in its next ~~annual report~~ Corporate Governance Report.

Recommended Best Practice

B.1.7 Issuers should disclose details of any remuneration payable to members of senior management, on an individual and named basis, in their annual reports and accounts.

~~*Notes: 1 Issuers should disclose details of any remuneration payable to members of senior management. Such disclosure should be to the same standard as that required for directors of issuers under paragraph 24 of Appendix 16.*~~

~~*2 For the purpose of this Code, "senior management" should refer to the same category of persons as referred to in the issuer's annual report and is required to be disclosed under paragraph 12 of Appendix 16.*~~

B.1.8 The board should conduct a regular evaluation of its own, and individual directors', performance.

C. ACCOUNTABILITY AND AUDIT

C.1 Financial reporting

Principle

The board should present a balanced, clear and comprehensible assessment of the company's performance, position and prospects.

Code Provisions

C.1.1 Management should provide ~~such~~ sufficient explanation and information to the board ~~as will~~ to enable ~~the board~~ it to make an informed assessment of ~~the~~ financial and other information put before ~~the board~~ it for approval.

~~*Note: Issuers are reminded of their obligation to comply with the financial reporting and disclosure requirements set out in the Exchange Listing Rules. Failure to comply with such requirements constitutes a breach of the Exchange Listing Rules.*~~

C.1.2 Management should provide all members of the Board with monthly updates giving a balanced and understandable assessment of the issuer's performance, position and prospects. These may include monthly management accounts and management updates.

C.1.~~2~~3 The directors should acknowledge in the Corporate Governance Report their responsibility for preparing the accounts.~~, and there~~ There should be a statement by the auditors about their reporting responsibilities in the auditors' report ~~on~~ of the financial statements. Unless it is inappropriate to assume that the company will continue in business, the directors should prepare the accounts on a going concern basis, with supporting assumptions or qualifications as necessary. ~~When~~ Where the directors are aware of material uncertainties relating to events or conditions that may cast significant doubt ~~upon~~ on the issuer's ability to continue as a going concern, ~~such uncertainties~~ they should be clearly and prominently ~~set out~~ disclosed and discussed at length in the Corporate Governance Report. The Corporate Governance Report should contain sufficient information ~~so as to enable~~ for investors to understand the severity and significance of ~~the~~ matters ~~at hand~~. To ~~the extent that it is~~ a reasonable and appropriate extent, the issuer may refer to ~~the~~ other ~~relevant~~ parts of the annual report. ~~Any such~~ These references should be clear and unambiguous and the Corporate Governance Report should not ~~only~~ contain only a cross-reference without any discussion of the matter.

C.1.4 The directors should include in the separate statement containing a discussion and analysis of the group's performance in the annual report, an explanation of

the basis on which the issuer generates or preserves value over the longer term (the business model) and the strategy for delivering the issuer's objectives.

Note: An issuer should have a corporate strategy and a long term business model. Long term financial performance as opposed to short term rewards should be a corporate governance objective. An issuer's board should not take undue risks to make short term gains at the expense of long term objectives.

C.1.~~3~~5 The board~~'s responsibility to~~ should present a balanced, clear and understandable assessment ~~extends to~~ in annual and interim reports, other price-sensitive announcements and other financial disclosures required ~~under~~ by the ~~Exchange~~ Listing Rules~~,~~. ~~and~~ It should also do so for reports to regulators ~~as well as to~~ and information disclosed under ~~required to be disclosed pursuant to~~ statutory requirements.

Recommended Best Practices

C.1.~~4~~6 An issuer should announce and publish quarterly financial results within 45 days after the end of the relevant quarter~~.~~. ~~;~~ These should ~~disclosing~~ disclose sufficient ~~such~~ information ~~as would~~ to enable shareholders to assess the issuer's performance, financial position and prospects ~~of the issuer~~. ~~Any such~~ An issuer's quarterly financial ~~reports~~ results should be prepared using the accounting policies ~~applied to the issuer's~~ of its half-year and annual accounts.

C.1.~~5~~7 Once an issuer ~~decides to~~ announces ~~and publish its~~ quarterly financial results, it should continue to do so ~~adopt quarterly reporting~~ for each of the first 3 and 9 months periods of subsequent financial years. Where ~~the issuer~~ it decides not to continuously announce and publish its financial results for a particular quarter, it should ~~publish an announcement to disclose~~ announce the reason(s) for ~~such~~ this decision.

C.2 Internal controls

Principle

The board should ensure that the issuer maintains sound and effective internal controls to safeguard ~~the~~ shareholders' investment and the issuer's assets.

Code Provisions

C.2.1 The directors should at least annually conduct a review of the effectiveness of the issuers' and its subsidiaries' ~~system of~~ internal control systems ~~of the issuer and its subsidiaries~~ and report to shareholders that they have done so in their Corporate Governance Report. The review should cover all material controls, including financial, operational and compliance controls and risk management functions.

C.2.2 The board's annual review should, in particular, consider the adequacy of resources, staff qualifications and experience, training programmes and budget

~~of staff~~ of the issuer's accounting and financial reporting function~~, and their training programmes and budget~~.

Recommended Best Practices

C.2.3 The board's annual review should, in particular, consider:

(a) the changes, since the last annual review, in the nature and extent of significant risks, and the issuer's ability to respond to changes in its business and the external environment;

(b) the scope and quality of management's ongoing monitoring of risks and of the ~~system of~~ internal control system, and where applicable, the work of its internal audit function and other assurance providers ~~of assurance~~;

(c) the extent and frequency of ~~the~~ communication of ~~the results of the~~ monitoring results to the board (or board committee(s)) which enables it to ~~build up a cumulative assessment of the state of~~ assess control ~~in~~ of the issuer and the effectiveness ~~with which~~ of risk ~~is being managed~~ management;

(d) ~~the incidence of~~ significant control failings or weaknesses that ~~has~~ have been identified ~~at any time~~ during the period. ~~and~~ Also, the extent to which they have resulted in unforeseen outcomes or contingencies that have had, could have had, or may in the future have, a material impact on the issuer's financial performance or condition; and

(e) the effectiveness of the issuer's processes ~~relating to~~ for financial reporting and Listing Rule compliance.

C.2.4 Issuers should disclose, ~~as part of~~ in the Corporate Governance Report, a narrative statement on how they have complied with ~~the~~ internal control code provisions ~~on internal control~~ during the reporting period. The disclosures should also include ~~the following items~~:

(a) the process ~~that an issuer has applied for~~ used to identify~~ing~~, ~~evaluating~~ evaluate and ~~managing the~~ manage significant risks ~~faced by it~~;

(b) ~~any~~ additional information to ~~assist understanding of the issuer's~~ explain its risk management processes and ~~system of~~ internal control system;

(c) an acknowledgement by the board that it is responsible for the ~~issuer's system of~~ internal control system and ~~for~~ reviewing its effectiveness;

(d) the process ~~that an issuer has applied in~~ used to review~~ing~~ the effectiveness of the ~~system of~~ internal control system; and

(e) the process ~~that an issuer has applied~~ used to ~~deal with~~ resolve material internal control ~~aspects of~~ defects for any significant problems disclosed in its annual reports and accounts.

C.2.5 Issuers should ensure that their disclosures provide meaningful information and do not give a misleading impression.

C.2.6 Issuers without an internal audit function should review the need for one on an annual basis and should disclose the outcome of ~~such~~ this review in the ~~issuers'~~ Corporate Governance Report.

C.3 Audit Committee

Principle

The board should establish formal and transparent arrangements ~~for~~ to consider~~ing~~ how it will apply ~~the~~ financial reporting and internal control principles and ~~for~~ maintain~~ing~~ an appropriate relationship with the ~~company's~~ issuer's auditors. The audit committee established ~~by an issuer pursuant to~~ under the ~~Exchange~~ Listing Rules should have clear terms of reference.

Code Provisions

C.3.1 Full minutes of audit committee meetings should be kept by a duly appointed secretary of the meeting (who should normally be the company secretary). Draft and final versions of minutes of the ~~audit committee~~ meetings should be sent to all committee members ~~of the committee~~ for their comment and records ~~respectively~~, ~~in both cases~~ within a reasonable time after the meeting.

C.3.2 A former partner of the issuer's existing auditing firm should be prohibited from acting as a member of ~~the issuer's~~ its audit committee for a period of 1 year ~~commencing on~~ from the date of his ceasing:

(a) to be a partner of the firm; or

(b) to have any financial interest in the firm,

whichever is ~~the~~ later.

C.3.3 The ~~terms of reference of the~~ audit committee's terms of reference should include at least ~~the following duties~~:-

Relationship with the issuer's auditors

(a) to be primarily responsible for making recommendations to the board on the appointment, reappointment and removal of the external auditor, and to approve the remuneration and terms of engagement of the external auditor, and any questions of its resignation or dismissal ~~of that auditor~~;

~~*Note: Issuers are reminded that rule 13.51(4) requires an announcement to be published when there is a change of auditors. The announcement must also include a statement as to whether there are any matters that need to be brought to holders of securities of the issuer.*~~

(b) to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process in accordance with applicable standards. The audit committee should discuss with the auditor the nature and scope of the audit and reporting obligations before the audit commences;

(c) to develop and implement policy on ~~the engagement of~~ engaging an external auditor to supply non-audit services. For this purpose, "external auditor" ~~shall~~ includes any entity that is under common control, ownership or management with the audit firm or any entity that a reasonable and informed third party ~~having knowledge of~~ knowing all relevant information would reasonably conclude ~~as~~ to be part of the audit firm nationally or internationally. The audit committee should report to the board, identifying and making recommendations on any matters ~~in respect of which it considers that~~ where action or improvement is needed ~~and making recommendations as to the steps to be taken~~;

Review of the issuer's financial information ~~of the issuer~~

(d) to monitor integrity of the issuer's financial statements ~~of an issuer~~ and ~~the issuer's~~ annual report and accounts, half-year report and, if prepared for publication, quarterly reports, and to review significant financial reporting judgements contained in them. ~~In this regard, i~~In reviewing these ~~issuer's annual report and accounts, half-year report and, if prepared for publication, quarterly~~ reports before submission to the board, the committee should focus particularly on: -

(i) any changes in accounting policies and practices;

(ii) major judgmental areas;

(iii) significant adjustments resulting from audit;

(iv) the going concern assumptions and any qualifications;

(v) compliance with accounting standards; and

(vi) compliance with the ~~Exchange~~ Listing Rules and ~~other~~ legal requirements in relation to financial reporting;

(e) ~~In regard to~~ Regarding (d) above:-

(i) members of the committee ~~must~~ should liaise with the ~~issuer's~~ board ~~of directors~~ and senior management and the committee must meet, at least ~~once~~ twice a year, with the issuer's auditors; and

(ii) the committee should consider any significant or unusual items that are, or may need to be, reflected in ~~such~~ the report~~s~~ and accounts, ~~and must~~ it should give due consideration to any matters that have been raised by the issuer's staff responsible for the accounting and financial reporting function, compliance officer or auditors;

Oversight of the issuer's financial reporting system and internal control procedures

(f) to review the issuer's financial controls, internal control and risk management systems;

(g) to discuss the internal control system with ~~the~~ management ~~the system of internal control and~~ to ensure that management has ~~discharged~~ performed its duty to have an effective internal control system. This discussion should include ~~including~~ the adequacy of resources, qualifications and experience of staff of the issuer's accounting and financial reporting function, and their training programmes and budget;

(h) to consider ~~any findings of~~ major investigation~~s~~ findings on ~~of~~ internal control matters as delegated by the board or on its own initiative and management's response to these findings;

(i) where an internal audit function exists, to ensure co-ordination between the internal and external auditors, and to ensure that the internal audit function is adequately resourced and has appropriate standing within the issuer, and to review and monitor ~~the~~ its effectiveness ~~of the internal audit function~~;

(j) to review the group's financial and accounting policies and practices;

(k) to review the external auditor's management letter, any material queries raised by the auditor to management ~~in respect of the~~ about accounting records, financial accounts or systems of control and management's response;

(l) to ensure that the board will provide a timely response to the issues raised in the external auditor's management letter;

(m) to report to the board on the matters ~~set out~~ in this code provision; and

(n) to consider other topics, as defined by the board.

Notes: ~~*The following*~~ *These are only intended to be suggestions* ~~*as to*~~ *on how compliance with* ~~*the above*~~ *this code provision may be achieved and do not form part of* ~~*the code provision*~~ *it.*

1 The audit committee may wish to consider establishing the following procedure to review and monitor the independence of external auditors: -

(i) consider all relationships between the issuer and the audit firm (including ~~*the provision of*~~ *non-audit services);*

(ii) ~~*seek*~~ *obtain from the audit firm annually,* ~~*on an annual basis,*~~ *information about policies and processes for maintaining independence and monitoring compliance with relevant requirements, including* ~~*current requirements regarding*~~ *those for rotation of audit partners and staff; and*

(iii) meet with the auditor, at least annually, in the absence of management, to discuss matters relating to its audit fees, any issues arising from the audit and any other matters the auditor may wish to raise.

2 The audit committee may wish to consider agreeing with the board the issuer's policies ~~*relating to the*~~ *on hiring* ~~*of*~~ *employees or former employees of the external auditors and monitoring the application of* ~~*such*~~ *these policies. The audit committee should then be in a position to consider whether* ~~*in the light of this*~~ *there has been or appears to be any impairment* ~~*or appearance of impairment,*~~ *of the auditor's judgement or independence* ~~*in respect of*~~ *for the audit.*

3 The audit committee ~~*would normally be expected to*~~ *should ensure that* ~~*the provision by*~~ *an external auditor's provision of non-audit services does not impair* ~~*the external auditor's*~~ *its independence or objectivity. When assessing the external auditor's independence or objectivity in relation to* ~~*the provision of*~~ *non-audit services, the audit committee may wish to consider:*

(i) whether the skills and experience of the audit firm make it a suitable supplier of ~~*the*~~ *non-audit services;*

(ii) whether there are safeguards in place to ensure that there is no threat to the objectivity and independence ~~*in*~~ *of the* ~~*conduct of the*~~ *audit because* ~~*resulting from the provision of such services by*~~ *the external auditor provides non-audit services;*

(iii) the nature of the non-audit services, the related fee levels ~~and the~~ fee levels individually and in ~~aggregate~~ total relative to the audit firm; and

(iv) ~~the~~ criteria ~~which govern the~~ for compensation of the individuals performing the audit.

4 For further guidance ~~on the duties of an audit committee~~, issuers may refer to the "Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence" issued by the Technical Committee of the International Organization of Securities Commissions in October 2002 and "A Guide for Effective Audit Committees" published by the Hong Kong Institute of Certified Public Accountants ~~(formerly known as the Hong Kong Society of Accountants)~~ in February 2002. Issuers may also adopt the terms of reference ~~set out~~ in those guides, or ~~they may adopt~~ any other comparable terms of reference for ~~the establishment of~~ establishing an audit committee.

C.3.4 The audit committee should make available its terms of reference, explaining its role and the authority delegated to it by the board by including them on the HKEx website and the issuer's website.

~~*Notes: 1 This requirement could be met by making it available on request and by including the information on the issuer's website.*~~

~~*2 Under paragraph 2(i)(i) of Appendix 23, issuers must explain the role of the audit committee in the Corporate Governance Report.*~~

C.3.5 Where the board disagrees with the audit committee's view on the selection, appointment, resignation or dismissal of the external auditors, the issuer should include in the Corporate Governance Report a statement from the audit committee explaining its recommendation and also the reason(s) why the board has taken a different view.

C.3.6 The audit committee should be provided with sufficient resources to ~~discharge~~ perform its duties.

~~Recommended Best Practices~~

C.3.7 The terms of reference of the audit committee should also require ~~the audit committee~~ it:

(a) to review arrangements ~~by which~~ employees of the issuer ~~may~~ can use, in confidence, to raise concerns about possible improprieties in financial reporting, internal control or other matters. The audit committee should ensure that proper arrangements are in place for ~~the~~ fair and independent investigation of ~~such~~ these matters and for appropriate follow-up action; and

(b) to act as the key representative body for overseeing the issuer's relations with the external auditor.

Recommended Best Practice

C.3.8 The audit committee should establish a whistleblowing policy for employees and those who deal with the issuer (e.g. customers and suppliers) to raise concerns, in confidence, with the audit committee about possible improprieties in any matter related to the issuer.

D. DELEGATION BY THE BOARD

D.1 Management functions

Principle

An issuer should have a formal schedule of matters specifically reserved ~~to the~~ for board ~~for its decision~~ approval. The board should give clear directions to management ~~as to~~ on the matters that must be approved by ~~the board~~ it before decisions are made on the issuer's behalf ~~of the issuer~~.

Code Provisions

D.1.1 When the board delegates aspects of its management and administration functions to management, it must, at the same time, give clear directions as to the ~~powers of~~ management's powers, in particular, ~~with respect to the circumstances~~ where management should report back and obtain prior board approval ~~from the board~~ before making decisions or entering into any commitments on the issuer's behalf ~~of the issuer~~.

Note: The board should not delegate matters to a board committee, executive directors or management to an extent that would significantly hinder or reduce the ability of the board as a whole to ~~discharge~~ perform its functions.

D.1.2 An issuer should formalise the functions reserved to the board and those delegated to management. It should review those arrangements ~~on a periodic basis~~ periodically to ensure that they remain appropriate to the issuer's needs ~~of the issuer~~.

~~*Note: Under paragraph 2(c)(iv) of Appendix 23, issuers must include in their Corporate Governance Report a statement of how the board operates, including a high-level statement of which types of decisions are to be taken by the board and which are to be delegated to management.*~~

~~**Recommended Best Practices**~~

D.1.3 An issuer should disclose the respective responsibilities, ~~division of responsibility between the board and management to assist those affected by corporate decisions to better understand the respective~~ accountabilities and contributions of the board and management.

D.1.4 Directors should clearly understand delegation arrangements in place. ~~To that end, issuers~~ Issuers should have formal letters of appointment for non-executive directors setting out the key terms and conditions ~~relative to~~ of their appointment. The letters of appointment should set out the expected time commitment.

D.2 Board Committees

Principle

Board committees should be formed with specific written terms of reference which deal clearly with ~~the committees'~~ their authority and duties.

Code Provisions

D.2.1 Where board committees are established to deal with matters, the board should ~~prescribe~~ give them sufficiently clear terms of reference to enable ~~such committees~~ them to ~~discharge~~ perform their functions properly.

D.2.2 The terms of reference of board committees should require ~~such committees~~ them to report back to the board on their decisions or recommendations, unless there are legal or regulatory restrictions on their ability to do so (such as a restriction on disclosure due to regulatory requirements).

D.3 Corporate Governance Committee

Code Provisions

D.3.1 The terms of reference of a corporate governance committee (or existing committees performing this function) should include at least:

(a) to develop and review an issuer's policies and practices on corporate governance and make recommendations to the board;

(b) to review and monitor the training and continuous professional development of directors and senior management;

(c) to review and monitor the issuer's policies and practices on compliance with legal and regulatory requirements;

(d) to develop, review and monitor the code of conduct and compliance manual (if any) applicable to employees and directors; and

(e) to review the issuer's compliance with the Code and disclosure in the Corporate Governance Report.

D.3.2 A corporate governance committee (or existing committees performing this function) should have a majority of independent non-executive directors as its members.

Note: A corporate governance committee should have at least 1 member who is an executive director or non-executive director with sufficient knowledge of the issuer's day-to-day operations.

Recommended Best Practice

D.3.3 The board should establish a corporate governance committee with specific written terms of reference (see D.3.1) which deal clearly with its authority and duties.

E. COMMUNICATION WITH SHAREHOLDERS

E.1 Effective communication

Principle

The board should ~~endeavour to maintain~~ be responsible for maintaining an on-going dialogue with shareholders and in particular, use annual general meetings or other general meetings to communicate with ~~shareholders~~ them and encourage their participation.

Code Provisions

E.1.1 ~~In respect of~~ For each substantially separate issue at a general meeting, a separate resolution should be proposed by the chairman of that meeting. Issuers should avoid "bundling" resolutions unless they are interdependent and linked forming one significant proposal. Where the resolutions are "bundled", issuers should explain the reasons and material implications in the notice of meeting.

Note: An example of a substantially separate issue is the nomination of persons as directors. Accordingly, each ~~such~~ person should be nominated by means of a separate resolution.

E.1.2 The chairman of the board should attend the annual general meeting. ~~and~~ He should also arrange for the chairmen of the audit, remuneration, ~~and~~ nomination and any other committees (as appropriate) to attend. ~~or in the~~ In their absence, ~~of the chairman of such committees,~~ he should arrange for another member of the committee or failing this his duly appointed delegate, to attend. ~~be~~ These persons should be available to answer questions at the annual general meeting. The chairman of the independent board committee (if any) should also be available to answer questions at any general meeting to approve a connected transaction or any other transaction that ~~is subject to~~ require independent shareholders' approval. An issuer's management should

ensure the external auditor attend the 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.

E.1.3 The issuer should arrange for the notice to shareholders to be sent ~~in the case of~~ for annual general meetings at least 20 clear business days before the meeting and to be sent at least 10 clear business days ~~in the case of~~ for all other general meetings.

E.1.4 The board should establish a shareholders' communication policy and review it on a regular basis to ensure its effectiveness.

E.2 Voting by Poll

Principle

The issuer should ensure that shareholders are familiar with the detailed procedures for conducting a poll.

Code Provisions

E.2.1 The chairman of a meeting should ~~at the commencement of the meeting~~ ensure that an explanation is provided of the detailed procedures for conducting a poll and ~~then~~ answer any questions from shareholders ~~regarding~~ on voting by ~~way of a~~ poll.

F. COMPANY SECRETARY

Principle

The company secretary plays an important role in supporting the board by ensuring good information flow within the board and that board policy and procedures are followed. The company secretary is responsible for advising the board through the chairman and /or the chief executive officer on governance matters and should also facilitate induction and professional development of directors.

Code Provisions

F.1.1 The company secretary should be an employee of the issuer and have day-to-day knowledge of the issuer's affairs. Where an issuer engages an external service provider as its company secretary, it should disclose the identity of a person with sufficient seniority (e.g. chief legal counsel or chief financial officer) at the issuer who the external provider can contact.

F.1.2 The board should approve the selection, appointment or dismissal of the company secretary.

Note: A board meeting should be held to discuss the dismissal of the company secretary and the matter should be dealt with by a physical board meeting rather than a written resolution.

F.1.3 The company secretary should report to the board chairman and/or the chief executive officer.

F.1.4 All directors should have access to the advice and services of the company secretary to ensure that board procedures, and all applicable rules and regulations, are followed.

F.1.5 The company secretary should maintain a record of the training undertaken by directors for each financial year under A.6.5.

CORPORATE GOVERNANCE REPORT

MANDATORY DISCLOSURE REQUIREMENTS

2. ~~Listed issuers shall~~ To provide transparency, the issuers must include the following information for the accounting period covered by the annual report and ~~any~~ significant subsequent events ~~pertaining to the following information~~ for ~~any subsequent~~ the period up to the date of publication of the annual report, to the extent ~~that is practicable~~ possible:

~~(a)~~G. CORPORATE GOVERNANCE PRACTICES

(~~i~~a) a narrative statement ~~of~~ explaining how the ~~listed~~ issuer has applied the principles in the Code, ~~providing explanation which enables~~ enabling its shareholders to evaluate how the principles have been applied;

(~~ii~~b) a statement as to whether the ~~listed~~ issuer meets the code provisions ~~in the Code~~. If ~~a listed~~ an issuer has adopted its own code that exceeds the code provisions ~~set out in the Code~~, ~~such listed issuer~~ it may draw attention to ~~such~~ this fact in its annual report; and

(~~iii~~c) ~~in the event of~~ for any deviation from the code provisions ~~set out in the Code~~, details of ~~such~~ the deviation during the financial year (including considered reasons ~~for such deviations~~).

~~(b)~~H. DIRECTORS' SECURITIES TRANSACTIONS

~~In respect of~~ For the Model Code set out in Appendix 10:

(~~i~~a) whether the ~~listed~~ issuer has adopted a code of conduct regarding directors' securities transactions on terms no less exacting than the required standard set out in the Model Code;

(~~ii~~b) having made specific enquiry of all directors, whether the directors of the ~~listed~~ issuer have complied with, or whether there has been any non-compliance with, the required

standard set out in the Model Code and its code of conduct regarding directors' securities transactions; and

(~~iii~~c) ~~in the event of~~ for any non-compliance with the required standard set out in the Model Code, if any, details of ~~such~~ these ~~non-compliance~~ and an explanation of the remedial steps taken by the ~~listed~~ issuer to address them ~~such non-compliance~~.

~~(c)~~I. BOARD OF DIRECTORS

Details ~~in relation to the board of directors of listed issuers, which include~~ of:

(~~i~~a) composition of the board, by category of directors, ~~of the listed issuer,~~ including name of chairman, executive directors, non-executive directors and independent non-executive directors;

(~~ii~~b) number of board meetings held during the financial year;

(~~iii~~c) ~~individual~~ attendance of each director, ~~on a named basis,~~ by name, at the board and general meetings;

Notes: 1 Only attendance by a director in person at board and general meetings should be counted, or attendance by electronic means such as telephonic or video-conferencing.

2 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.

(d) 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. Attendance at board or committee meetings by an alternate director should not be counted as attendance by the director himself.

(~~iv~~e) a statement of the respective responsibilities, accountabilities and contributions of the board and management. In particular, a statement of how the board operates, including a high level statement ~~of which~~ on the types of decisions ~~are to be~~ taken by the board and ~~which are to be~~ those delegated to management;

(~~v~~f) details of non-compliance (if any) with rules 3.10(1) and (2), and 3.10A and an explanation of the remedial steps taken ~~by the listed issuer~~ to address ~~such~~ non-compliance. This should cover non-compliance with ~~relating to~~ appointment of a sufficient number of independent non-executive directors and appointment of ~~and~~ an independent non-executive director with appropriate professional qualifications, or accounting or related financial management expertise~~, respectively~~;

~~*Note: Listed issuers are reminded of their obligation to comply with rules 3.10(1) and (2). Failure to comply with such requirements constitutes a breach of the Exchange Listing Rules.*~~

(~~vi~~g) reasons why the ~~listed~~ issuer considers an independent non-executive director to be independent where he/she fails to meet one or more of the guidelines for assessing independence set out in rule 3.13; ~~and~~

(~~vii~~h) relationship (including financial, business, family or other material/relevant relationship(s)), if any, ~~among~~ between board members ~~of the board~~ and in particular, between the chairman and the chief executive officer~~.~~;

~~(d)~~J. CHAIRMAN AND CHIEF EXECUTIVE OFFICER

Disclose:

(~~i~~a) the identity of the chairman and chief executive officer; and

(~~ii~~b) whether the roles of the chairman and chief executive officer are ~~segregated~~ separate and ~~are not~~ exercised by ~~the same~~ different individuals.

~~(e)~~K. NON-EXECUTIVE DIRECTORS

The term of appointment of non-executive directors.

~~(f) Remuneration of directors~~ BOARD COMMITTEES

The following information ~~relating to~~ for each of the ~~directors'~~ remuneration ~~policy~~ committee, nomination committee, audit committee and corporate governance committee:

(~~i~~a) the role and function of the ~~remuneration~~ committee ~~(if any) or the reason(s) for not having a remuneration committee~~;

(~~ii~~b) the composition of the ~~remuneration~~ committee and whether it comprises independent non-executive directors, non-executive directors and executive directors ~~(if any)~~ (including their names and identifying ~~in particular~~ the chairman of the ~~remuneration~~ committee);

(~~iii~~c) the number of meetings held by the ~~remuneration~~ committee ~~or the board of directors (if there is no remuneration committee)~~ during the year to discuss ~~remuneration related~~ matters and the record of ~~individual~~ attendance of members~~, on a named basis~~ by name, at meetings held during the year; and

(~~iv~~d) a summary of the work during the year, including:

(i) for the remuneration committee, determining the policy for the remuneration of executive directors, assessing performance of executive directors and approving the terms of executive directors' service contracts, performed by the remuneration committee~~ or board of directors (if there is no remuneration committee) during the year~~. Disclose which of the two models of remuneration committee described in B.1.2(c) was adopted;

(ii) for the nomination committee, determining the policy for the nomination of directors, performed by the nomination committee or the board of directors (if there is no nomination committee) during the year. The nomination procedures and the process and criteria adopted by the nomination committee or the board of directors (if there is no nomination committee) to select and recommend candidates for directorship during the year. Details of its review on the non-executive directors' annual confirmation that they have spent sufficient time on the issuer's business;

(iii) for the corporate governance committee, determining the policy for the corporate governance of the issuer, performed by the corporate governance committee or another board committee (if there is no corporate governance committee) during the year; and

(iv) for the audit committee, a report on how it met its responsibilities in its review of the quarterly (if relevant), half-yearly and annual results and internal control system, and its other duties under the Code. Details of non-compliance with rule 3.21 (if any) and an explanation of the remedial steps taken by the issuer to address non-compliance with establishment of an audit committee.

~~*Note: Under Appendix 16, listed issuers are required to give a general description of the emolument policy and long-term incentive schemes as well as the basis of determining the emolument payable to their directors.*~~

~~**(g) Nomination of directors**~~

~~The following information relating to the~~ nomination committee and ~~appointment and removal of directors:~~

~~(i) the role and function of the nomination committee (if any);~~

~~(ii) the composition of the nomination committee (if any)(including names and identifying in particular the chairman of the nomination committee);~~

~~(iii) the nomination procedures and the process and criteria adopted by the nomination committee or the board of directors (if there is no nomination committee) to select and recommend candidates for directorship during the year;~~

~~(iv) a summary of the work, including determining the policy for the nomination of directors, performed by the nomination committee or the board of directors (if there is no nomination committee) during the year; and~~

~~(v) the number of meetings held by the nomination committee or the board of directors (if there is no nomination committee) during the year and the record of individual attendance of members, on a named basis, at meetings held during the year.~~

~~(h)~~M. AUDITOR'S REMUNERATION

An analysis of remuneration in respect of audit and non-audit services provided by the auditors (including any entity that is under common control, ownership or management with the audit firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as part of the audit firm nationally or internationally) to the ~~listed~~ issuer. ~~Such~~ The analysis must include, in respect of each significant non-audit service assignment, details of the nature of the services and the fees paid.

~~**(i) Audit committee**~~

~~The following information relating to the audit committee:~~

~~(i) its role, function and composition of the committee members (including names and identifying in particular the chairman of the audit committee);~~

~~(ii) the number of audit committee meetings held during the year and record of individual attendance of members, on a named basis, at meetings held during the year;~~

~~(iii) a report on the work performed by the audit committee during the year in discharging its responsibilities in its review of the quarterly (if relevant), half-yearly and annual results and system of internal control, and its other duties set out in the Code; and~~

~~(iv) details of non-compliance with rule 3.21 (if any) and an explanation of the remedial steps taken by the listed issuer to address such non-compliance relating to establishment of an audit committee.~~

~~*Note: Listed issuers are reminded of their obligation to comply with rule 3.21. Failure to comply with such requirements constitutes a breach of the Exchange Listing Rules.*~~

Note: ~~In addition to the disclosure obligations described above, the~~ The code provisions ~~in the Code~~ expect issuers to make certain specified disclosures in the Corporate Governance Report. Where issuers choose not to make the expected disclosure, they must give considered reasons for ~~the deviation in accordance with~~ not doing so under paragraph ~~2~~G(a)(iii). For ease of reference, the specific disclosure expectations of the code provisions are ~~set out below~~:

1 ~~an~~ directors' acknowledgement ~~from the directors~~ of their responsibility for preparing the accounts and a statement by the auditors about their reporting responsibilities (C.1.~~2~~3 of the Code);

2 report on material uncertainties, if any, relating to events or conditions that may cast significant doubt upon the ~~listed~~ issuer's ability to continue as a going concern (C.1.~~2~~3 of the Code);

3 *a statement that the board has conducted a review of the effectiveness of the ~~system of~~ internal control system of the issuer and its subsidiaries (C.2.1 of the Code); and*

4 *a statement from the audit committee explaining its recommendation and the reason(s) why the board has taken a different view from ~~that of~~ the audit committee ~~regarding~~ on the selection, appointment, resignation or dismissal of ~~the~~ external auditors (C.3.5 of the Code).*

N. COMPANY SECRETARY

The following information relating to the company secretary:

(a) where an issuer engages an external service provider as its company secretary, its primary corporate contact person at the issuer (including his/her name and position); and

(b) details of non-compliance with rule 3.29.

O. SHAREHOLDERS' RIGHTS

Disclose:

(a) how shareholders can convene an extraordinary general meeting;

(b) the procedures by which enquiries may be put to the board and sufficient contact details to enable these enquiries to be properly directed; and

(c) the procedures and sufficient contact details for putting forward proposals at shareholders' meetings.

P. INVESTOR RELATIONS

Disclose:

(a) any significant changes in the issuer's articles of association during the year.

RECOMMENDED DISCLOSURES

~~3.~~ The disclosures set out in this paragraph ~~relating to~~ on corporate governance matters are provided for ~~listed~~ issuers' reference. They are not intended to be exhaustive or mandatory. They are ~~rather~~ intended to ~~set out~~ show the areas which ~~listed~~ issuers may comment on in their Corporate Governance Report. The level of detail~~s~~ needed varies with the nature and complexity of ~~listed~~ issuers' business activities. ~~Listed issuers~~ Issuers are encouraged to include the following information in their Corporate Governance Report:

~~(a)~~Q. SHARE INTERESTS OF SENIOR MANAGEMENT

(~~i~~a) the number of shares held by senior management (i.e. those individuals whose biographical details are disclosed in the annual report).

~~**(b) Shareholders' rights**~~

~~(i) shareholders can convene an extraordinary general meeting;~~

~~(ii) the procedures by which enquiries may be put to the board together with sufficient contact details to enable such enquiries to be properly directed; and~~

~~(iii) the procedures for putting forward proposals at shareholders' meetings with sufficient contact details.~~

~~(c)~~R. INVESTOR RELATIONS

~~(i) any significant changes in the listed issuer's articles of association during the year;~~

~~(ii)~~(a) details of shareholders by type and aggregate shareholding;

~~*Note: Listed issuers are reminded of their obligation to comply with the requirements in Appendix 16 and Practice Note 5 relating to the disclosure of interests in the listed issuer. They may wish to mention such information in this section of the Corporate Governance Report.*~~

~~(iii)~~(b) details of the last shareholders' meeting, including the time and venue, major items discussed and voting particulars ~~as to voting~~;

~~(iv)~~(c) indication of important shareholders' dates in the coming financial year; and

~~(v)~~(d) public float capitalisation ~~as~~ at the ~~end of the~~ year end.

~~(d)~~S. INTERNAL CONTROLS

(~~i~~a) where ~~a listed~~ an issuer includes a directors' statement ~~by the directors~~ that they have conducted a review of its internal control system ~~of internal control~~ in the annual report ~~pursuant to~~ under paragraph C.2.1 ~~of the Code~~, ~~the listed issuer~~ it is encouraged to disclose the following ~~details in such report~~:

(~~aa~~i) an explanation of how the ~~system of~~ internal control system has been defined for the ~~listed~~ issuer;

(~~bb~~ii) procedures and internal controls for the handling and dissemination of price sensitive information;

(~~cc~~iii) whether the ~~listed~~ issuer has an internal audit function ~~or the outcome of the review of the need for an internal audit function where the listed issuer has no such function~~;

(iv) the outcome of the review of the need for an internal audit function conducted, on an annual basis, by an issuer without one (C.2.6 of the Code).

(~~dd~~v) how often internal controls are reviewed;

(~~ee~~vi) a statement that the directors have reviewed the effectiveness of the ~~system of~~ internal control system and whether they consider ~~the internal control systems~~ them effective and adequate;

(~~ff~~vii) ~~criteria for the~~ directors' criteria for ~~to~~ assessing the effectiveness of the ~~system of~~ internal control system;

(~~gg~~viii)the period ~~which~~ covered by the review ~~covers~~;

(~~hh~~ix) details of any significant areas of concern which may affect shareholders;

(~~ii~~x) significant views or proposals put forward by the audit committee; and

(~~jj~~xi) where ~~a listed~~ an issuer has not conducted a review of its internal control system during the year, an explanation why ~~it has not done so~~ not;

(~~ii~~b) a narrative statement ~~(including the items under C.2.3 of the Code) of~~ explaining how the ~~listed~~ issuer has complied with the ~~code provisions~~ recommended best practices on internal control during the reporting period (C.2.3 of the Code); and

~~(iii) the outcome of the review conducted on an annual basis, by an issuer without an internal audit function of the need for one (C.2.5 of the Code).~~

~~(e)~~T. MANAGEMENT FUNCTIONS

(~~i~~a) the division of responsibility between the board and management.

Note: Issuers may consider that some of the information recommended under paragraphs ~~3~~ G to P is too lengthy and detailed to be included in the Corporate Governance Report. As an alternative to full disclosure in the Corporate Governance Report, issuers may choose to include some or all of this information:

(a) on its website and highlight to investors where they can:

(i) access the soft copy ~~of this information on its website~~ by giving a hyperlink direct~~ly~~ to the relevant webpage; and/or

(ii) collect a hard copy of the relevant information free of charge; or

(b) where the information is publicly available, by stating where the information can be found. Any hyperlink should be direct~~ly~~ to the relevant webpage.

APPENDIX III: PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY STATEMENT

Provision of Personal Data

1. Your supply of Personal Data to HKEx is on a voluntary basis. “Personal Data” in these statements has the same meaning as “personal data" in the Personal Data (Privacy) Ordinance, Cap 486, which may include your name, identity card number, mailing address, telephone number, email address, login name and/or your opinion.

Personal Information Collection Statement

2. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. It sets out the purposes for which your Personal Data will be used after collection, what you are agreeing to in respect of HKEx’s use, transfer and retention of your Personal Data, and your rights to request access to and correction of your Personal Data.

Purpose of Collection

3. HKEx may use your Personal Data provided in connection with this consultation paper for purposes relating to this consultation and for one or more of the following purposes:

   - administration, processing and publication of the consultation paper and any responses received;
   - performing or discharging HKEx’s functions and those of its subsidiaries under the relevant laws, rules and regulations;
   - research and statistical analysis; and
   - any other purposes permitted or required by law or regulation.

Transfer of Personal Data

4. Your Personal Data may be disclosed or transferred by HKEx to its subsidiaries and/or regulator(s) for any of the above stated purposes.

5. To ensure that the consultation is conducted in a fair, open and transparent manner, any response together with your name may be published on an “as is” basis, in whole or in part, in document form, on the HKEx website or by other means. In general, HKEx will publish your name only and will not publish your other Personal Data unless specifically required to do so under any applicable law or regulation. If you do

not wish your name to be published or your opinion to be published, please state so when responding to this paper.

Access to and Correction of Data

6. You have the right to request access to and/or correction of your Personal Data in accordance with the provisions of the Personal Data (Privacy) Ordinance. HKEx has the right to charge a reasonable fee for processing any data access request. Any such request for access to and/or correction of your Personal Data should be addressed to the Personal Data Privacy Officer of HKEx in writing by either of the following means:

By mail to:
Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

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

By email to: pdpo@hkex.com.hk

Retention of Personal Data

7. Your Personal Data will be retained for such period as may be necessary for the carrying out of the above-stated purposes.

Privacy Policy Statement

8. HKEx is firmly committed to preserving your privacy in relation to the Personal Data supplied to HKEx on a voluntary basis. Personal Data may include names, identity card numbers, telephone numbers, mailing addresses, e-mail addresses, login names, opinion, etc., which may be used for the stated purposes when your Personal Data are collected. The Personal Data will not be used for any other purposes without your consent unless such use is permitted or required by law or regulation.

9. HKEx has security measures in place to protect against the loss, misuse and alteration of Personal Data supplied to HKEx. HKEx will strive to maintain Personal Data as accurately as reasonably possible and Personal Data will be retained for such period as may be necessary for the stated purposes and for the proper discharge of the functions of HKEx and those of its subsidiaries.