

## Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp2010124.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

### CHAPTER 1: INTRODUCTION

#### Plain Writing Amendments

Question 1. Do you have any comments on the plainer writing amendments? Do you consider any part(s) of the plainer writing amendments will have unintended consequences?

Yes

No

Please give reasons for your views.

We support the need for need for plainer writing in rules and regulations but do not have any particular comments on the amendments suggested.

### CHAPTER 2: PROPOSED SUBSTANTIVE AMENDMENTS

#### PART I: DIRECTORS

##### 1. Directors' Duties and Time Commitments

Question 2. Do you agree with our proposed change to Rule 3.08 to clarify the responsibilities the Exchange expects of directors?

Yes

No

Please give reasons for your views.

The change provides some clarity and guidance, and also emphasises to directors what responsibilities they should be undertaking. Some directors, say of smaller issuers, may not understand the need for their detailed involvement in the issuer. Also, the responsibilities outlined are stated broadly enough not to lead to any inappropriate limitation in what directors believe they should be doing.

Question 3. Do you agree with our proposed addition of the Note to Rule 3.08 referring to the guidance issued by the Companies Registry and HKIOD?

Yes

No

Please give reasons for your views.

It is appropriate to refer to these guides as they are accepted leading practices. However, the Note should be clear that it is guidance and not a rule (to avoid any misunderstanding on the extent to which the guides are authoritative). It should also say that the guidance is based on the latest version of the Company Registry and HKIoD documents, as issued by the two bodies, to cater for the situation when the guidance is updated later on.

Question 4. Do you agree to include a new duty (CP A.5.2(e)) in the nomination committee's written terms of reference that it should regularly review the time required from a director to perform his responsibilities to the issuer, and whether he is meeting that requirement?

Yes

No

Please give reasons for your views.

Yes. Some guidance on time required is acceptable but should not detract from the fact that it is the quality of time spent by a director that is more important. What is the Exchange's definition of "regularly" review in this case? Annual would seem appropriate. Also, the proposed rule does not seem to consider possibilities for dealing with cases where the nomination committee finds a director's time spent to be inadequate (i.e. should this be disclosed in the Corporate Governance Report?). The issuer would need to put mechanisms in place to ensure the nomination committee was monitoring the time spent by directors on an on-going basis.

Question 5. Do you agree to include a new duty (CP A.5.2(f)) in the nomination committee's written terms of reference that it should review NEDs' annual confirmation that they have spent sufficient time on the issuer's business ?

Yes

No

Please give reasons for your views.

However, we believe the annual confirmation provided by the NED should be more wide-ranging and should cover qualitative matters such as whether the NED believes he was adequately supported by the issuer in fulfilling his/her duties and in achieving his/her time commitment. This would provide a more effective basis for ensuring the quality of NEDs' contributions to an issuer and reduce the risk that meeting the requirement becomes a matter of form over substance.

Question 6. Do you agree to include a disclosure requirement in the Corporate Governance Report (paragraph L(d)(ii) of Appendix 14) that NEDs have made annual confirmation to the nomination committee that they have spent sufficient time on the issuer's business?

Yes

No

Please give reasons for your views.

We do not feel that this is consistent with the principles of "comply or explain" and that there is any reason why this particular requirement should require positive confirmation.

If positive disclosure in the Corporate Governance Report is required in relation to this issue, it may be more effective if this was in respect of the results of the nomination committee's review or its confirmation that it has done its review and the directors have/have not spent sufficient time on the issuer's business.

Question 7. Do you agree to expanding CP A.5.3 (re-numbered CP A.6.3) to state that a director should limit his other professional commitments and acknowledge to the issuer that he will have sufficient time to meet his obligations?

Yes

No

Please give reasons for your views.

We agree with the proposal. However, we believe that the rule should not refer to "professional commitments" but to "commitments" in general. This is because it may be unclear what a professional commitment is. Also, commitments that are not deemed to be professional may require a significant amount of time on the part of the director. It is the overall time that a director is able to dedicate to the issuer that is important.

We also suggest that directors should inform the issuer of all the commitments that they have as part of the process by which they are selected and annually. This information can be used in agreeing the time that the directors should spend on the issuer for the purposes of issuing their letters of appointment, in accordance with re-numbered CP D.1.4.

Question 8. Do you agree to expanding CP A.5.3 (re-numbered CP A.6.3) to state that an NED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business?

Yes

No

Please give reasons for your views.

We agree with this proposal but suggest that a wider form of confirmation is adopted, as mentioned in our response to Question 5 above. In addition, it may be helpful to add to the confirmation that the director expects to have sufficient time to devote to the issuer's business in the coming year.

Question 9. Do you agree to upgrading RBP D.1.4 to a CP (re-numbered CP D.1.4) and amending it to state that an NED's letter of appointment should set out the expected time commitment?

Yes

No

Please give reasons for your views.

This is reasonable. It provides a basis for the issuer and NED to discuss the specific tasks that the NED needs to undertake and to agree the time commitment needed. This should lead to better planning of work, more appropriate levels of remuneration and better understanding by NEDs of what is required of them.

However, we believe that the letter of appointment should also cover other matters relating to the issue of the NEDs time commitment i.e. it should contain clauses that require the issuer to support the NED in fulfilling his/her commitments (i.e. access to appropriate individuals and information required). Time is just one element in ensuring the effective contribution of NEDs to an issuer.

Question 10. Do you agree to upgrading RBP A.5.6 to a CP (re-numbered CP A.6.6) and to amending it to encourage timeliness of disclosure by a director to the issuer on any change to his significant commitments?

Yes

No

Please give reasons for your views.

This has some use and is not too onerous. However, we suggest that "timeliness" should be defined in this case.

Question 11. Do you consider that there should be a limit on the number of INED positions an individual may hold?

Yes

No

Please give reasons for your views.

Whilst we support the initiative to ensure that directors have sufficient time to devote to issuers, any limit would be arbitrary and difficult to apply in practice. This is because the appropriate number of positions that an INED should hold will vary from person to person and from issuer to issuer. A better measure is for each issuer to look at the time required for each individual position and include this in the letter of appointment per re-numbered CP D.1.4 and apply CP A.5.2(e) regarding retrospective regular review by the nomination committee. If these measures are applied, then, over time, the INEDs would tend to assume only an appropriate number of positions.

The Exchange may wish to consider issuing guidance to issuers on the risks of hiring INEDs that have many different commitments.

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

N/A

Question 13. If your answer to Question 11 is “yes”, do you think that it should be a Rule or a CP?

Rule

CP

Please give reasons for your views.

N/A. We do not agree with limiting the number of positions INEDs can hold but, if the Exchange does proceed with this measure, we believe it should be a CP and not a Rule, given that flexibility should be applied in this matter i.e. there may be valid exceptions to the limit which can simply be explained in the issuer's annual report.

## 2. Directors’ Training and Independent Non-executive Directors

Question 14. Do you agree that we should upgrade RBP A.5.5 (requirement for continuous professional development) to a CP (re-numbered CP A.6.5)?

Yes

No

Please give reasons for your views.

We recognise the need to promote directors' continuous professional development but believe that more research into the issue should be done before this requirement is upgraded. There are various matters that should be addressed first. For instance, whether a distinction should be made between structured (i.e. classroom) and unstructured training should be considered. If so, the amounts of these respective types of training to be required should be defined. We believe that a balanced mixture of structured and unstructured training should be required as unstructured training (attending conferences, etc.) may not be as effective as classroom training. Also, the Exchange should consider implementing an accreditation process for directors' training to help ensure that this fully effective.

Question 15. Do you agree that the minimum number of hours of directors training should be eight?

Yes

No

Please give reasons for your views.

If the Exchange does decide to bring in a required minimum number of hours, this should be consistent with the hours recommended by the Hong Kong Institute of Directors i.e. there seems to be no particular reason to require eight hours when the HKIoD requires ten?

Question 16. What training methods do you consider to be acceptable for the requirements stated in the proposed CP (re-numbered RBP A.6.5)? Please give reasons for your views.

Acceptable training methods should comprise of on-line courses, in-house briefings, reading articles, and attending conferences and seminars. Preparing and giving speeches are also relevant. However, reading relevant books and articles, which is often difficult to measure or verify, should be excluded.

The Exchange should consider how relevant accreditation can be monitored and what system it could establish for accreditation.

As mentioned in our response to Question 14, relevant structured and unstructured training

The Exchange should refer to the practices of various professional bodies in determining an approach to directors' training.

Question 17. Do you agree that we should upgrade RBP A.3.2 (at least one-third of an issuer's board should be INEDs) to a Rule (re-numbered Rule 3.10A)?

Yes

No

Please give reasons for your views.

This requirement should be upgraded to a Rule so that it becomes standard and general practice. The upgrade will prevent Hong Kong from falling behind other jurisdictions in relation to board independence. The objections to this made in paras 71 to 73 are difficult to justify. Cost should not be an issue in relation to the improved governance and protection of minority shareholders that would result. Sufficient capable resources should exist in Hong Kong.

Question 18. Do you agree that this Rule (at least one-third of an issuer's board should be INEDs) be effective after a transitional period as described in paragraph 87 of the Consultation Paper?

Yes

No

Please give reasons for your views.

It is appropriate to provide some transition time. The period seems reasonable and is not too long. Although the proposed date is two years from now, it will take time for the revised Code on Corporate Governance to be finalised and issued.

Question 19. Do you agree that we should upgrade RBP A.4.3 (shareholder to vote on a separate resolution for the further employment of an INED who has served more than nine years) to a CP (re-numbered CP A.4.3)?

Yes

No

Please give reasons for your views.

We agree with the proposal in principle. However, the choice of nine years appears to be fairly arbitrary. It would be useful for the Exchange to provide further guidance and education to the market on the threats and benefits associated with long terms of service to assist shareholders in deciding whether the continuation by a long-serving INED is appropriate, before making this a CP.

Question 20. Do you agree with our proposal to upgrade RBP A.4.8 (issuer should include explanation of its reasons for election and independence of an INED in a circular) to a CP (re-numbered CP A.5.5)?

Yes

No

Please give reasons for your views.

Hugh: Yes. This seems to provide clarity.

### 3. Board Committees

#### A. Remuneration Committee

Question 21. Do you agree with our proposal to move the requirement for issuers to establish a remuneration committee with a majority of INED members from the Code (CP B.1.1) to the Rules (Rule 3.25)?

Yes

No

Please give reasons for your views.

Hugh: Yes: The Remuneration Committee is a key element of corporate governance and so moving this to the Rules will ensure such committees are definitely established (i.e. it will become a requirement and not just a matter that has to be explained if a remuneration committee is not established, without sanction). The change would help bring Hong Kong in line with other markets. Making the requirement a rule is consistent with the proposal to make the requirement for boards to be comprised of one-third of INEDs a rule, rather than a CP.

Question 22. Do you agree with our proposal that the remuneration committee must be chaired by an INED?

Yes

No

Please give reasons for your views.

An INED would bring a degree of objectivity to the process of determining remuneration.

Question 23. Do you agree with our proposal to move the requirement for issuers to have written terms of reference for the remuneration committee from the Code (CP B.1.1) to the Rules (Rule 3.26)?

Yes

No

Please give reasons for your views.

We have no objection to including this as a rule but there is no need for this and it would be just as effective remaining as a CP. This is probably a matter that is too detailed for the Rules, which should be reserved for more significant issues. Provided the requirement for establishing a remuneration committee is moved from the Code to the Rules, this should lead to issuers putting in place proper terms of reference.

Question 24. Do you agree with our proposal to add a new Rule (Rule 3.27) requiring an issuer to make an announcement if it fails to meet the requirements of proposed Rules 3.25, 3.26 and 3.27?

Yes

No

Please give reasons for your views.

This gives further support to the rules and emphasises to issuers the importance of appropriate levels of remuneration to good corporate governance.

However, is there a circular reference in relation to Rule 3.27 which seems to refer to itself?

Question 25. Do you agree with our proposal that issuers that fail to meet Rules 3.25, 3.26 and 3.27 should have three months to rectify this?

Yes

No

The duration seems reasonable. However, the Exchange should consider establishing a requirement that the remuneration committee should be prohibited from taking substantive decisions in this three month period.

Question 26. Do you agree that we should add “independent” to the professional advice made available to a remuneration committee (CP B.1.2, re-numbered CP B.1.1)?

Yes

No

Please give reasons for your views.

It is important that this advice can be independent.

Question 27. Do you agree that, in order to accommodate Model B, we should revise CP B.1.3 (re-numbered CP B.1.2) as described in paragraph 117 of the Consultation Paper?

Yes

No

Please give reasons for your views.

Model B should be accommodated as, in practice, a large number of issuers will adopt it.

Question 28. (i) Do you agree that where the board resolves to approve any remuneration with which the remuneration committee disagrees, the board should disclose the reasons for its resolution in its corporate governance report)? (ii) If your answer is “yes”, do you agree that RBP B.1.8 should be revised and upgraded to a CP (re-numbered CP B.1.6).

(i)  Yes  No

(ii)  Yes  No

Please give reasons for your views.

For i), if Model B is implemented, this requirement is valid as the board's overriding of the remuneration committee's position is a key issue, especially given current sensitivity globally relating pay and bonuses. Differences in the position of the board and this committee should be made known to investors and the ability to make this disclosure should strengthen the position of the remuneration committee. However, the scope of "remuneration" needs to be defined by the Exchange, preferably broadly to cover all types of fixed and variable pay.

For ii), this creates, however, a slightly odd situation in that, if an issuer did not disclose, it would have to disclose the non-disclosure as part of the "comply or explain" process. This might encourage issuers to breach the Code and not disclose the non-disclosure. Hence it could be more appropriate to make the disclosure a Rule.

Question 29. Do you agree that the term “performance-based” should be deleted from CP B.1.2(c) (re-numbered CP B.1.2(b)) and revised as described in paragraph 118 of the Consultation Paper?

Yes

No

Please give reasons for your views.

The change is clear and logical.

B. Nomination Committee

Question 30. Do you agree that RBP A.4.4 (establishment and composition of a nomination committee, re-numbered CP A.5.1) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

The nomination committee is an important part of an issuers overall governance structure.

Question 31. Do you agree that the proposed CP (currently RBP A.4.4) should state that the nomination committee's chairman should be an INED?

Yes

No

Please give reasons for your views.

This will help to ensure the effective working of the board and better governance.

Question 32. Do you agree that RBP A.4.5 (nomination committee's terms of reference, re-numbered CP A.5.2) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

If the requirement for a nomination committee becomes a CP, then the requirements relating to the contents of its terms of reference should also be upgraded for consistency.

Question 33. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should be performed at least once a year?

Yes

No

Please give reasons for your views.

This seems to be a logical and reasonable requirement that should help ensure that the nomination committee fulfils one of its key duties.

Question 34. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should implement the issuer's corporate strategy?

Yes

No

Please give reasons for your views.

This will help to ensure that the nomination committee fulfils one of its underlying objectives.

Note: This should be "complement", not "implement".

Question 35. Do you agree that RBP A.4.6 (availability of nomination committee's terms of reference) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

The proposal aids transparency and helps to ensure that investors have information that informs them of whether the nomination committee is likely to be performing effectively.

Question 36. Do you agree that the proposed CP (currently RBP A.4.6, re-numbered CP A.5.3) should state that issuers should include their nomination committee's terms of reference on the HKEx website?

Yes

No

Please give reasons for your views.

Provides greater transparency.

Question 37. Do you agree that RBP A.4.7 (sufficient resources for the nomination committee, re-numbered CP A.5.4) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

However, it is not clear what is meant by "sufficient resources" is and guidance should be provided in relation to this.

Question 38. Do you agree that the proposed CP (currently RBP A.4.7, re-numbered CP A.5.4) should clarify that a nomination committee should be able to seek independent professional advice at the issuer's expense?

Yes

No

Please give reasons for your views.

The ability to seek independent advice contributes to more effective management of the nomination committee. It is also consistent with the change proposed for the remuneration committee.

C. Corporate Governance Committee

Question 39. Do you agree with the proposed terms of reference listed in paragraph 141 of the Consultation Paper?

Yes

No

Please give reasons and alternative suggestions.

These are sound practices which should be undertaken for good governance in any issuer, though they can be performed by any existing committee, function or officer without the establishment of a corporate governance committee. Also, we support the view in paragraph 139 that good corporate governance is a matter for the whole board.

Question 40. Do you consider that the committee(s) performing the proposed duties listed in paragraph 141 of the Consultation Paper should submit to the board a written report on its work annually?

Yes

No

Please give reasons for your views.

This would be a useful form of communication and would facilitate proper oversight of the issuers' corporate governance. However, the report can be provided to the board by other responsible functions (which do not need to be a corporate governance committee or even a formal committee).

Question 41. Do you consider that this report (as described in paragraph 140 of the Consultation Paper) should be published as part of the issuer's corporate governance report?

Yes

No

Please give reasons for your views.

We believe that the report should not be published (except in an abridged form). This is to prevent it becoming a standard or boilerplate document, representing form over substance.

Question 42. Do you agree with introducing RBP D.3.3 stating that an issuer should establish a corporate governance committee?

Yes

No

Please give reasons for your views.

This would be a best practice. However, issuers should be left to determine whether other committees or functions can fulfil the duties of the corporate governance committee. Also, the responsibilities set out in paragraph 141 can be undertaken by the board as a whole, though having them undertaken by a separate committee would enable them to be the mandate of a function that is comprised of a majority of INEDs.

Question 43. Do you agree the duties of an existing committee or committees can be expanded to include those of a corporate governance committee?

Yes

No

Please give reasons for your views.

This is reasonable. These practices should be expected of committees as they are basic and essential requirements. However, it should be made clear that these responsibilities should not be secondary to the existing committees' current work.

Question 44. Do you agree with the addition of CP D.3.2 stating that the committee performing the proposed duties listed in paragraph 141 of the Consultation Paper should comprise a majority of INEDs?

Yes

No

Please give reasons for your views.

Having committees that have a majority of INEDs represents good corporate governance practice. It is consistent with what is being proposed for the remuneration committee. The concern that there are not enough people capable of serving as INEDs in Hong Kong should not be seen as a reason not to move forward.

Question 45. Do you agree with the proposal to add a note to CP D.3.2 stating that the committee should include one member who is an executive director or non-executive director with sufficient knowledge of the issuer's day-to-day operations?

Yes

No

Please give reasons for your views.

This would enhance the corporate governance of most issuers.

D. Audit committee

Question 46. Do you agree with our proposal to upgrade RBP C.3.7 (audit committee's terms of reference should include arrangements for employees to raise concerns about improprieties in financial reporting) to a CP?

Yes

No

Please give reasons for your views.

Whistle-blowing-type functions are critical to good governance. It should also report directly to the audit committee.

However, why would the terms of reference deal with internal whistle-blowing only? It would seem to us that the audit committee's terms of reference should include arrangements for both internal and external whistle-blowing as contemplated by Question 48.

Question 47. Do you agree with our proposal to amend CP C.3.3(e)(i) to state that the audit committee should meet the external auditor at least twice a year?

Yes

No

Please give reasons for your views.

Contact between the audit committee and the external auditor makes a useful contribution to the governance of the issuer. The proposal will foster more effective communication between the auditor and audit committee to cater for the planning or interim and reporting phases of the audit at a minimum. The half-yearly timeframe is also consistent with the requirements for interim reporting in Hong Kong. Also, the Hong Kong Standards on Auditing requires that auditor to communicate with those charged with governance on a timely basis.

However, we have a concern that implementing a CP with a minimum requirement for meetings between the audit committee and the auditor will lead to a form over substance approach with meetings being held simply to meet the requirement. It may be better to express the requirement in terms of the underlying principle rather than in terms of a number of meetings. Thus, alternatively, the CP should state that the audit committee should meet with the auditor whenever the auditor is reporting on matter (i.e. a special transaction as well as a statutory audit) or performs scoping or planning or an audit or review. In addition, a meeting should be held whenever there are any whistle-blower allegations (from either internal or external sources) relating to financial reporting or internal controls.

Furthermore, the Exchange should clarify whether or not it is necessary for the whole committee to meet with the auditors under the CP.

Question 48. Do you agree that a new RBP should be introduced to encourage audit committees to establish a whistleblowing policy?

Yes

No

Please give reasons for your views.

Given the importance of the whistle-blowing function, this requirement should be a CP. The requirement in Question 46/para 147 seems to be a sub-set of this case and so the two are inconsistent (i.e. one proposes a CP and the other an RBP). Both aspects (financial reporting issues raised by employees and whistle-blowing in general) can be addressed under one measure, a CP.

#### 4. Remuneration of Directors, CEO and Senior Management

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

Yes

No

Please give reasons for your views.

This measure does not add much in relation to the extra administration required.

Question 50. If your answer to Question 49 is yes, do you agree with our proposal that senior management remuneration disclosure should include sales commission?

Yes

No

Please give reasons for your views.

N/A.

Question 51. Do you agree with our proposal to amend Appendix 16 to require an issuer to disclose the CEO's remuneration in its annual report and by name?

Yes

No

Please give reasons for your views.

This provides consistency and ensures substance over form regarding the CEO's remuneration if he/she is not a director.

Question 52. Do you agree with our proposal to upgrade RBP B.1.6 to a CP (a significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance, re-numbered CP B.1.5)?

Yes

No

Please give reasons for your views.

This requirement could lead to consequences that are the opposite of what is intended such as the issue of excessive bonuses. In addition, a "significant proportion" needs to be defined. It may be more appropriate just to require that executive directors' remuneration should be performance-based or linked to long-term performance.

## 5. Board Evaluation

Question 53. Do you agree with our proposal to add new RBP B.1.8 that issuers should conduct a regular evaluation of its own and individual directors' performance?

Yes

No

Please give reasons for your views.

(It is assumed that the Exchange's intention is for the issuer's board to review its own performance, not for the issuer to review its own performance). This should arguably be a CP. If it remains a RBP, only a limited number of issuers will take it up. This is because the assessment process can be complex and difficult to organise. For instance, there are a number of different approaches to performing board evaluations (i.e. self-assessment, peer review, external evaluation) and each issuer needs to determine detailed criteria and an appraisal process. The Exchange should provide some guidance in this area.

Also, making this requirement a CP would bring Hong Kong in line with other jurisdictions including the UK and Mainland China.

## 6. Board Meetings

- A. Considering a matter where there is a conflict of interest by a physical board meeting rather than a written board resolution

Question 54. Do you agree that, except for plain language amendments, the wording of CP A.1.8 (re-numbered CP A.1.7) should be retained (issuers to hold a board meeting to discuss resolutions on a material matter where a substantial directors or a director has a conflict of interest)?

Yes

No

Please give reasons for your views.

Agree that it is more appropriate that connected transactions are not considered by circulation, as these are significant issues for which the related risks should be fully discussed.

Question 55. Do you agree with our proposals to add a note to CP A.1.8 (re-numbered CP A.1.7) stating that attendance at board meetings can be achieved by telephonic or video conferencing?

Yes

No

Please give reasons for your views.

These measures are sufficient means of communication. The approach is more flexible and reflects the reality that some directors may not always be available to attend in person.

## B. Directors' Attendance at Board Meetings

Question 56. Do you agree with our proposal to add the notes to paragraph I(c) of Appendix 14 (on attendance at board meetings) as described in paragraph 195 of the Consultation Paper?

Yes

No

Please give reasons for your views.

This is more flexible and reflects the fact that directors cannot always attend in person. Point b) is clear and logical.

Question 57. Do you agree with our proposal to introduce a new requirement (paragraph I(d) to Appendix 14) that attendance by an alternate should not be counted as attendance by the director himself?

Yes

No

Please give reasons for your views.

This measure should encourage proper attendance. If alternative means of attendance, such as video-conferencing and conference call, are regarded as acceptable there is no reason why alternates should be required.

Question 58. Do you agree with our proposal that an issuer disclose, for each named director, the number of board or committee meetings he attended and separately the number of board or committee meetings attended by his alternate?

Yes

No

Please give reasons for your views.

It would be reasonable to disclose this information and would not represent an excessive administrative burden, as the required data should be easy to obtain.

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

Question 59. Do you agree with our proposal to revise Rule 13.44 to remove the exemption described in paragraph 199 (transactions where a director has an interest)?

Yes

No

Please give reasons for your views.

Removing the exception would provide better corporate governance. If the director has any interest in a transaction, he should be prohibited from voting. This is because the director could have an interest which is less than 5% in the relevant company but this interest could still be highly significant to the director in question, which means that this individual could still have a conflict of interest and act in a way which was not in the interests of the issuer.

## 7. Chairman and Chief Executive Officer

Question 60. Do you agree with our proposal to remove the words “at the board level” from Code Principle A.2 to clarify the division between management of the board and day-to-day management of an issuer’s business?

Yes

No

Please give reasons for your views.

Removing these words is clearer. Leaving these words in the Code implies that non-separation of the management of the board and day-to-day management is acceptable.

Question 61. Do you agree with our proposal to amend CP A.2.3 to add “accurate” and “clear” to describe the information that the chairman should ensure directors receive?

Yes

No

Please give reasons for your views.

Adding these words provides clarity. It helps to ensure that the information that directors receive has integrity and is fully appropriate.

Question 62. Do you agree with our proposal to upgrade RBP A.2.4 to a CP to give greater emphasis to the chairman’s duty to provide leadership for the board, to ensure that the board works effectively and discharges its responsibilities, etc.?

Yes

No

Please give reasons for your views.

In some issuers, the Chairman plays a figurehead role only and may not be the best person to undertake these duties. Provided another director performs leadership duties, this should be sufficient. Also, this is a broad and subjective area. Issuers would find it difficult to determine whether they comply or whether they have an exception to explain. We suggest this matter is left as a RBP.

Question 63. Do you agree with our proposal to upgrade RBP A.2.5 to a CP and amend it to state: “The chairman should take primary responsibility for ensuring that good corporate governance practices and procedures are established”?

Yes

No

Please give reasons for your views.

This should be left as a RBP. Please refer to our comments in Question 62.

Question 64. Do you agree with our proposal to upgrade RBP A.2.6 to a CP to emphasise the chairman’s responsibility to encourage directors with different views to voice their concerns, allow sufficient time for discussion of issues and build consensus?

Yes

No

Please give reasons for your views.

This should be left as a RBP. Please refer to our comments in Question 62.

Question 65. Do you agree with our proposal to upgrade RBP A.2.7 to a CP and amend it to state that the chairman should hold separate meetings with only INEDs and only NEDs at least once a year?

Yes

No

Please give reasons for your views.

This should be left as a RBP. Please refer to our comments in Question 62.

Also, please could the Exchange explain why it is necessary to distinguish INEDs and NEDs in this proposal. We would suggest that it is only the meeting with the INEDs that is critical.

Question 66. Do you agree with our proposal to upgrade RBP A.2.8 to a CP to highlight the chairman's role to ensure effective communication between the board and shareholders?

Yes

No

Please give reasons for your views.

This should be left as a RBP. Please refer to our comments in Question 62.

Question 67. Do you agree with our proposal to upgrade RBP A.2.9 to a CP to emphasise the chairman's role to enable NED contributions and constructive relations between EDs and NEDs?

Yes

No

Please give reasons for your views.

This should be left as a RBP. Please refer to our comments in Question 62.

## 8. Notifying directorship change and disclosure of directors' information

Question 68. Do you agree that we should amend Rule 13.51(2) to require issuers to disclose the retirement or removal of a director or supervisor?

Yes

No

Please give reasons for your views.

Making this amendment means that disclosures on changes to directors would be more comprehensive. Retirement and removal are issues that shareholders want to know about. They could relate to serious matters such as poor performance or fraud.

Question 69. Do you agree that we should amend Rule 13.51(2) to apply to the appointment, resignation, re-designation, retirement or removal of a CEO (and not only to a director or supervisor)?

Yes

No

Please give reasons for your views.

Making this amendment means that disclosures on changes to directors or CEOs would be more comprehensive.

Question 70. Do you agree that we should amend Rule 13.51(2)(o) to cover all civil judgments of fraud, breach of duty or other misconduct involving dishonesty?

Yes

No

Please give reasons for your views.

This would be more meaningful and comprehensive.

Question 71. Do you agree that we should amend Rule 13.51B(3)(c) to clarify that the sanctions referred to in that Rule are those made against the issuer (and not those of other issuers)?

Yes

No

Please give reasons for your views.

This is clearer.

Question 72. Do you agree with our proposal to upgrade RBP A.3.3 to a CP to ensure that directors' information is published on an issuer's website?

Yes

No

Please give reasons for your views.

This will provide more real-time and effective information, and demonstrates better use of technology.

Question 73. Do you agree with our proposed amendment to the CP (RBP A.3.3 upgraded) that directors' information should also be published on the HKEx website?

Yes

No

Please give reasons for your views.

This will provide more real-time and effective information, and demonstrates better use of technology.

## 9. Providing Management Accounts or Management Updates to the Board

Question 74. Do you agree that we should add CP C.1.2 stating issuers should provide board members with monthly updates as described in paragraph 240 of the Consultation Paper?

Yes

No

Please give reasons for your views.

Although we agree that board members should be provided with regular management updates and that this would ensure that the financial reporting system within the issuer is sufficiently robust, it may not be necessary for these updates to be circulated on a monthly basis (i.e. it may be acceptable for quarterly updates to be provided to avoid burdening management with the responsibility to prepare and review these updates so often when they also have other duties to fulfil). The suggested frequency could be included as an RBP with the CP merely saying that the updates should be prepared with "sufficient regularity".

On the other hand, this is arguably a matter of commercial or operational preference, rather than of corporate governance.

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

Question 75. Do you agree with the proposed amendment to Rule 13.25A(2)(a)(viii) and (ix) removing the need for issuers to publish a Next Day Disclosure Return following the exercise of options for shares in the issuer by a director of a subsidiary?

Yes

No

Please give reasons for your views.

This is acceptable as directors of subsidiaries are likely to be at the level of senior management in the overall group context.

Question 76. Do you agree with the proposed amendment to Rule 13.25A (2)(b)(i) and (ii) to require issuers to publish a Next Day Disclosure only if options for shares in the issuer exercised by a director of its subsidiary or subsidiaries results in a change of 5% or more (individually or when aggregated with other events) of the issuer's share capital since its last Monthly Return?

Yes

No

Please give reasons for your views.

It is acceptable to apply a materiality level.

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

Question 77. Do you agree that we should introduce the proposed CP (CP C.1.4) as described in paragraph 250 of the Consultation Paper?

Yes

No

Please give reasons for your views.

This will provide some useful information to investors. It will also encourage smaller listed companies to think about their business model and to define a clear strategy, as this may not already be happening in all cases.

## 12. Directors' Insurance

Question 78. Do you agree with our proposal to upgrade RBP A.1.9 (issuers should arrange appropriate insurance for directors) to a CP (re-numbered CP A.1.8)?

Yes

No

Please give reasons for your views.

This should ensure adequate protection is provided to the issuer and its shareholders.

Question 79. Do you agree with our proposal to add the words "adequate and general" to RBP A.1.9 (upgraded and re-numbered CP A.1.8)?

Yes

No

Please give reasons for your views.

This will help to ensure that insurance coverage is appropriate and sufficiently comprehensive.

## PART II: SHAREHOLDERS

### 1. Shareholders' General Meetings

#### A. Notice of Meeting and Bundling of Resolutions

Question 80. Do you agree with our proposal to amend CP E.1.1 to state that issuers should avoid "bundling" of resolutions and where they are "bundled" explain the reasons and material implications in the notice of meeting?

Yes

No

Please give reasons for your views.

This would be an improvement and would bring Hong Kong's rules more in line with other jurisdictions on this point.

However, for clarity, we suggest the wording is changed to "issuers should avoid "bundling" resolutions unless the resolutions are interdependent and linked so as to form one significant proposal, in which case the issuer should explain the reasons and material implications in the notice of meeting."

B. Voting by Poll

Question 81. Do you agree with our proposal to amend Rule 13.39(4) to allow a chairman at a general meeting to exempt procedural and administrative matters described in paragraph 274 of the Consultation Paper from voting by poll?

Yes

No

Please give reasons for your views.

However, we suggest stating that "procedural and administrative" matters are "only" those which: (a) do not appear.... (b) relate to the chairman's....."

The examples of procedural and administrative matters stated in para 275 should be added to the rules, as they are currently not included.

Question 82. Do you agree with the examples of procedural and administrative resolutions in paragraph 275 of the Consultation paper? Do you have any other examples to add?

Yes

No

Please give reasons for your views.

However, the example of a fire should be removed. In the case of an emergency, the priority should be on evacuation rather than on voting, regardless of whether this is by poll or by a show of hands. As mentioned in Question 81 above, the examples should be added to the rules.

Question 83. Do you agree that our proposed amendments to Rule 13.39(5) clarify disclosure in poll results?

Yes

No

Please give reasons for your views.

These seem to provide clarity.

Question 84. Do you agree with our proposal to amend CP E.2.1 to remove the words "at the commencement of the meeting" so that an issuer's chairman can explain the procedures for conducting a poll later during a general meeting?

Yes

No

Please give reasons for your views.

We agree with the principle. However, the wording could be improved to state that the chairman can provide explanations at any time that he/she deems it necessary (i.e. at the start, during the meeting and before a vote), but in all cases the explanation must be provided in advance of the poll in question.

#### C. Shareholders' Approval to Appoint and Remove an Auditor

Question 85. Do you agree with our proposal to add new Rule 13.88 to require shareholder approval to appoint the issuer's auditor?

Yes

No

Please give reasons for your views.

This would bring Hong Kong in line with other markets and would align the requirements of the Rules with the Companies Act, which is applicable to all companies. It closes the loophole relating to the fact that many issuers are not Hong Kong-resident companies.

However, it seems the question of the process that should be followed when there is a casual vacancy in the auditor's position has not been established.

Question 86. Do you agree with our proposal to add, in new Rule 13.88, a requirement for shareholder approval to remove the issuer's auditor before the end of his term of office?

Yes

No

Please give reasons for your views.

This would be consistent with the proposal to require shareholder approval for the appointment of the auditor. It would allow for the reasons for the intended removal of the auditor to be properly considered and a fair and balanced outcome obtained (i.e. ensure that the directors do not remove the auditor at the expense of the shareholders). The proposal will align the Listing Rules with Hong Kong law.

Question 87. Do you agree that the new Rule 13.88 should require a circular for the removal of the auditor to shareholders containing any written representation from the auditor and allow the auditor to make written and/or verbal representation at the general meeting to remove him?

Yes

No

Please give reasons for your views.

This would seem fair and would enable shareholders to obtain a balanced view of the reasons why the issuer intends to remove the auditor. Greater transparency regarding this matter will help to prevent unjustifiable dismissals of auditors from taking place, for example when the issuer invalidly disputes the auditor's position on a matter but claims the dismissal is because of failure to agree fees.

However, the Exchange may wish to consider aligning this change with the proposed change in the Hong Kong Companies Bill which allows the issuer, or persons who claims to be aggrieved, to apply to the court for an order not to publish such statement.

D. Directors' Attendance at Meetings

Question 88. Do you agree with our proposal to upgrade RBP A.5.7 (NEDs' attendance at meetings) to a CP (re-numbered CP A.6.7)?

Yes

No

Please give reasons for your views.

We disagree with the upgrading of RBP A.5.7 to a CP as the issuer should have the discretion to determine how many or which NEDs (including INEDs) should attend certain meetings. Accordingly, retaining A.5.7 as a RBP will retain this flexibility, without imposing the burden of having to explain any deviation from the requirement. In addition, we support the proposal to mandate disclosure of details of attendance at general meetings of each director by name (question 90 below), which already promotes good governance.

Question 89. Do you agree with our proposal to upgrade RBP A.5.8 (NEDs should make a positive contribution to the development of the issuer's strategy and policies) to a CP (re-numbered CP A.6.8)?

Yes

No

Please give reasons for your views.

The positive contribution will be hard to define and is very subjective. It is difficult to include such a requirement in the "comply or explain" system and to determine whether an issuer, that feels that it complies, really does so. It will lead to issuers simply reporting that they have complied without much consideration of the matter.

Question 90. Do you agree with our proposal to introduce a new mandatory disclosure provision in Appendix 23 (re-numbered paragraph I(c) of Appendix 14) stating that issuer must disclose details of attendance at general meetings of each director by name?

Yes

No

Please give reasons for your views.

This represents improved transparency and compliance with the proposal would not represent a significant administrative burden.

Question 91. Do you agree with our proposal that CP E.1.2 state the issuer's chairman should arrange for the chairman of "any other committees" to attend the annual general meeting?

Yes

No

Please give reasons for your views.

This would provide consistency across all committees and therefore represents improved practice, but the arrangements do not need to be performed by the chairman.

E. Auditor's Attendance at Annual General Meetings

Question 92. Do you agree with our proposal that CP E.1.2 state that the chairman should arrange for the auditor to attend the issuer's annual general meeting to answer questions about the conduct of the audit, the preparation and content of the auditors' report, the accounting policies and auditor independence?

Yes

No

Please give reasons for your views.

This is acceptable in principle provided the CP is very carefully worded to avoid an expectation gap on the part of shareholders and that it is made clear to all parties the limited subjects on which the auditor is able to answer questions (i.e. regarding qualifications, accounting policies, etc. only). As mentioned in para 305, the objections raised in para 304 can all be addressed by providing an explanation of the auditor's role. In fact, such a process would provide a useful means of educating investors of the auditor's true legal responsibilities in respect of the audit and would therefore reduce future misunderstandings and disputes in this regard, including in cases of unwarranted attempts to remove auditors.

However, in most other situations, for the reasons set out in paragraph 304, we believe that mandatory attendance at the general meeting may not add value to the shareholders. Our understanding of the experience in the jurisdictions in which attendance by auditors is mandatory is that the responses provided to questions directed to the auditor tend to be "standard" and are rightfully re-directed to the directors or are necessarily "educational" in nature, explaining matters such as the limitations of an audit or the reason why specific views about individual items within the financial statements or on specific audit procedures cannot be provided.

The Exchange should also liaise with the Hong Kong Institute of Certified Public Accountants to agree on the appropriate guidance on attendance at AGMs that should be provided to auditors, using the guidance available in Australia as a model. This will help to ensure consistency in the application of the CP. However, perhaps the Exchange should also conduct a more comprehensive international comparison than is reflected in paragraphs 307 and 308 before proceeding further on this matter.

**2. Shareholders' Rights**

Question 93. Do you agree with our proposal to upgrade the recommended disclosure of “shareholders’ rights” under paragraph 3 (b) of Appendix 23 to mandatory disclosure (re-numbered paragraph O of Appendix 14)?

Yes

No

Please give reasons for your views.

This would be clearer and makes sense. Once this disclosure is set up, it would not represent an administrative burden.

### 3. Communication with Shareholders

#### A. Establishing a Communication Policy

Question 94. Do you agree with our proposed new CP E.1.4 stating that issuers should establish a shareholder communication policy?

Yes

No

Please give reasons for your views.

This is not the most critical matter covered in these proposals but assignment of responsibility for communication with shareholders and a process for achieving good quality information on a timely basis would be of use.

However, we suggest that the Exchange provides guidance on this subject.

#### B. Publishing Constitutional Documents on Website

Question 95. Do you agree with our proposal to add a new Rule 13.90 requiring issuers to publish an updated and consolidated version of their M & A or constitutional documents on their own website and the HKEx website?

Yes

No

Please give reasons for your views.

We do not see any real benefit in this proposal. M&A and constitutional documents are very similar from issuer to issuer and do not provide that much information that is useful to the investor. We would recommend adoption of the approach in markets such as the UK, Australia and Singapore in which a shareholder can have the right to request a copy of these documents from the issuer.

C. Publishing Procedures for Election of Directors

Question 96. Do you agree with our proposal to add a new Rule 13.51D requiring an issuer to publish the procedures for shareholders to propose a person for election as a director on its website?

Yes

No

Please give reasons for your views.

This would be easy to implement and would provide useful information. It would also have low administrative costs.

D. Disclosing Significant Changes to Constitutional Documents

Question 97. Do you agree with our proposal to upgrade the recommended disclosure of any significant change in the issuer's articles of association under paragraph 3(c)(i) of Appendix 23 to mandatory disclosure (re-numbered paragraph P(a) of Appendix 14) ?

Yes

No

Please give reasons for your views.

The change is good in principle but it may be difficult to define what a "significant" change is. This means that application of the proposal may not be consistent, rendering it ineffective.

**PART III: COMPANY SECRETARY**

**1. Company Secretary's Qualifications, Experience and Training**

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

Yes

No

Please give reasons for your views.

This would enhance the standard of company secretaries' performance in the long-run, as well as consistency between issuers.

Question 99. Do you agree that the Exchange should consider as acceptable the list of qualifications for company secretaries set out in paragraph 345 of the Consultation Paper?

Yes

No

Please give reasons for your views.

The list reflects current practice and so is reasonable.

Question 100. Do you agree that the Exchange should consider the list of items set out in paragraph 346 of the Consultation Paper when deciding whether a person has the relevant experience to perform company secretary functions?

Yes

No

Please give reasons for your views.

The items listed are reasonable. However, it may be beneficial for the Exchange to clarify how the items would be applied and to make them more specific. For instance, how long is an acceptable length of employment? How would familiarity with the rules be assessed? What is accepted as being relevant training?

Question 101. Do you agree with our proposal to remove the requirement for company secretaries to be ordinarily resident in Hong Kong?

Yes

No

Please give reasons for your views.

This is an acceptable proposal because residence does not relate to competence to perform the role of company secretary.

Question 102. Do you agree with our proposal to repeal Rule 19A.16 so that Mainland issuers' company secretaries would need to meet the same requirements as for other countries?

Yes

No

Please give reasons for your views.

Agree. However, this seems to be a consequence of the change proposed above to remove the requirement for company secretaries to be ordinarily resident in Hong Kong.

Question 103. Do you agree with our proposal to add a Rule 3.29 requiring company secretaries to attend 15 hours of professional training per financial year?

Yes

No

Please give reasons for your views.

We do not agree to the introduction of Rule 3.29 as it is too onerous to mandate a minimum number of hours of training for company secretaries annually. The proposed rule is also unclear as to what "relevant" professional training means.

Since the Exchange will consider the academic professional qualifications of the company secretary, including whether he has membership with certain professional organisations under the new Rule 3.28, we think that it is more appropriate to rely on the relevant professional organisations to monitor the ongoing professional development requirements for company secretaries.

However, like the proposal for directors' training in questions 14 and 15, we recommend that a CP can be introduced which requires the company secretary to participate in a programme of continuous professional development, for example, monitored by his/her professional organisation. The number of hours, if included, is best dealt with as the best practice guidance in an RBP.

Question 104. Do you agree with the proposed transitional arrangement on compliance with Rule 3.29 in paragraph 350 of the Consultation Paper?

Yes

No

Please give reasons for your views.

This proposal seems arbitrary and the Exchange's basis for choosing this implementation schedule has not been explained. If a company secretary needs training, it should be taken as quickly as possible. It may be more appropriate and easier just to set a reasonable single date and have everyone comply with it, say the end of 2013. Regulations affecting the company secretary's work change frequently and required standards usually increase over time. Therefore, it is not necessarily correct to assume that company secretaries with long experience do not require training. In addition, we do not agree with the implementation of Rule 3.29.

## 2. New Section in Code on Company Secretary

Question 105. Do you agree with our proposal to include a new section of the Code on company secretary?

Yes

No

Please give reasons for your views.

The company secretary is a key element of an issuer's overall corporate governance structure and so a related section in the Code is warranted.

Question 106. Do you agree with the proposed principle as described in paragraph 362 of the Consultation Paper and set out in full in page 27 of Appendix II?

Yes

No

Please give reasons for your views.

Roles and responsibilities seem reasonable and consistent with market understanding.

Question 107. Do you agree with our proposed CP F.1.1 stating the company secretary should be an employee of the issuer and have knowledge of the issuer's day-to-day affairs?

Yes

No

Please give reasons for your views.

This requirement is not necessary. The company secretary could still be effective in performing his/her duties if they are a member of the same group as the issuer, without being its direct employee. Alternatively, the position could be filled by an individual from outside the issuer's group who has sufficient knowledge of its business (for instance, an individual from an outside service provider who is seconded full-time to the issuer).

Also, we are not clear why the proposed CP F1.1 seems to require that the company secretary should be an employee of the issuer but then acknowledges that it might be an external service provider (para 364). This appears to be contradictory.

Question 108. Do you agree with our proposal described in paragraph 364 of the Consultation Paper, that if an issuer employs an external service provider, it should disclose the identity of its issuer contact person?

Yes

No

Please give reasons for your views.

This would facilitate better communication between an issuer and the outside service provider.

Question 109. Do you agree with our proposed CP F.1.2 stating that the selection, appointment or dismissal of the company secretary should be the subject of a board decision?

Yes

No

Please give reasons for your views.

This would help the company secretary position to earn the status within the issuer's governance structure that it should have.

Question 110. Do you agree with our proposed note to CP F.1.2 stating that the board decision to select, appoint or dismiss the company secretary should be made at a physical board meeting and not dealt with by written board resolution?

Yes

No

Please give reasons for your views.

Important decisions, such as in relation to the selection, appointment and removal of a company secretary, should not be made by circulation.

Question 111. Do you agree with our proposal to add CP F.1.3 stating that the company secretary should report to the Chairman or CEO?

Yes

No

Please give reasons for your views.

The company secretary should not report to the CEO. This would make the company secretary's role, which is primarily one of governance, a less effective check and balance in respect of executive management.

We also believe it may not be appropriate or necessary for the company secretary to report to the Chairman. For example, it may be more suitable for the company secretary to report to another director with a more distinct governance role if, say, the Chairman's role is simply one of a figurehead.

Question 112. Do you agree with our proposal to add CP F.1.5 stating that the company secretary should maintain a record of directors training?

Yes

No

Please give reasons for your views.

This is clear and logical. It also supports the proposals being made by the Exchange in relation to directors' training. In addition, we recommend that the record should also cover the company secretary's training, in line with the proposal in question 103, and a summary of this record should be presented to the board or, if any, the corporate governance committee for annual reporting purposes.

## CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS

### 1. Definition of “Announcement” and “Announce”

Question 113. Do you agree with our proposal to include a definition in the Rules for the terms “announcement” and “announce” as described in paragraph 371 of the Consultation Paper?

Yes

No

Please give reasons for your views.

This is clearer.

## 2. Authorised Representatives’ Contact Details

Question 114. Do you agree with our proposal to amend Rule 3.06(1) to add a reference to authorised representatives “mobile and other telephone numbers, email and correspondence addresses” and “any other contract details prescribed by the Exchange may prescribe from time to time”?

Yes

No

Please give reasons for your views.

The change reflects the growing importance in electronic forms of communication and is more comprehensive.

## 3. Merging Corporate Governance Report Requirements into Appendix 14

Question 115. Do you agree with our proposal to merge Appendix 23 into Appendix 14 for ease of reference?

Yes

No

Please give reasons for your views.

Seems to be reasonable and would be more convenient.

Question 116. Do you agree with our proposal to streamline Appendix 23 and to make plain language amendments to it?

Yes

No

Please give reasons for your views.

We support plain language initiatives.

- End -