

18 March 2011

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

Dear Sir,

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

I refer to the above consultation paper.

Please find attached my responses on the Part III of Chapter 2 thereof on my personal basis.

I shall be appreciated if you will not disclose my name in your publication of my attached responses.

Thank you.

Yours faithfully,

## 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.*

I agree on the purpose of specifying continuous obligation.

*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.*

I agree.

*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.*

I do not agree.

The company secretary is compelled to be a professional rather than an academic. The main issue is of the ethics practice, not knowledge management. The company secretary assumes the responsibility of advising corporate governance matters to the board in being a person of influence in supporting the corporate governance of the organisation. To a probable extent, he or she might be the person supporting the board in form of their agent responsible for pushing the development of the governance matters, exactly the case as mentioned in the Australian code in this regard. In light of this as to effectively discharging this responsibility, he or she must be a person complying with the fundamental principles of integrity (be straightforward and honest in all professional and business relationships), objectivity (not allow bias, conflicts of interest or undue influence of others to override professional or business judgements), professional competence and due care (maintain professional knowledge and skill at the level required to ensure the directors and management receive competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards), confidentiality and professional behaviour (comply with laws and regulations and avoid any action that discredits the profession). He or she shall not knowingly engage in any business, occupation or activity that impairs or might impair integrity, objectivity or the good reputation of the profession, resulting in being incompatible with the fundamental principles. He or she is under a certain degree of pressure in the course of pushing the implementation of the governance matters and assuming the responsibility should breaching of rules arise.

It is of utmost importance that the persons responsible for giving advice on governance matters are bound by strict standards in the code of ethics of professional bodies of

chartered secretaries, lawyers and professional accountants. That is their value in being a bulwark against morally questionable practices, standing above the fray and performing impartial analyses objectively, whatever the pressures from elsewhere in the organisation to distort unpalatable facts. They are instrumental in counteracting the development of culture that normalises the payment of bribes.

Ethics-based culture is invariably essential for the long-term viability of a business. The Listing Rules should facilitate this by stipulating that the Company Secretary must be a professional in assuring the quality of governance of listing companies. Taking away or doing something facilitating disregarding this rule is similar to facilitate something sort of reckless driving.

The value of Hong Kong focus is exactly the professional-oriented for the office of company secretary. This exactly the value we need to pass on to China companies purporting to list in Hong Kong, supporting them to enhance the value of governance and ethics-based culture. In China, the experience was that economy grew fast but against the slow pace of political change, with insufficient supervisions of government officers. The absolute power made people absolute corruption. Under the great financial incentive but without supervision, the local government officers stepped on the corruption roads in form of corruption interest groups, acting in defiance of the execution orders from the senior management of Central Government who also found no ways to correct or penalise them. The PRC companies listed or to be listed in Hong Kong should do something to prevent the said culture spread in the companies. One of the measures is to follow the Hong Kong focus as to the qualification of company secretary having to be a professional subject to code of ethics of the concerned professional bodies.

The current Rule 8.17(3) was an old and obsolete rule catering for the early circumstances in Hong Kong where some company secretaries of the time possessed qualifications other than chartered secretaries, lawyers and professional accountants. But nowadays in the contemporary management with focus on corporate governance, this part of Rule 8.17(3) is actually a loophole or flaw requiring to be rectified. And this must be done as soon as possible to prevent the ever-increasing expansion of the loopholes by the waiver practices where the office are assumed by non-professional persons but being allowed to use a professional to support his or her deficiency following the practice as to PRC financial controller in the course of repealing Rule 3.24. This in effect destroys the value of being a professional assuming such important office of company secretary as aforesaid, contrary to the very spirit of corporate governance.

*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.*

I do not agree. It is essential to be ordinarily resident in Hong Kong so as to be ready to receive and learn of the governance issues and developments in Hong Kong. In addition, the company secretary must be in a location where he or she is ready to be communicated with the Hong Kong Stock Exchange. Further, such removal is not necessary if the Rule

19A.16 remains unchanged in catering for the company secretaries of PRC companies given Hong Kong being one of the cities of PRC.

*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.*

I do not agree. Please see the comment for Question 101.

*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.*

I do not agree since the company secretary must be a professional (see my comment on question 100) who is already required to attend continuous professional development each year and who shall comply with the fundamental principle of professional competence and due care in maintaining professional knowledge and skill at the level required to ensure the directors and management receive competent professional services based on current developments in practice, legislation and techniques and acting diligently and in accordance with applicable technical and professional standards.

*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.*

I agree as to the existing company secretaries who are not professionals.

*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.*

I agree.

*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.*

I agree.

*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.*

I agree. How can a senior management member not an employee of the issuer if he assumes the role and responsibilities in paragraph 362 and is required to discharge the same effectively? Further, this arrangement is a sort of risk management as far as governance practice is concerned.

*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.*

I do not agree. This kind of occasion should no longer exist as far as risk management on governance is concerned.

*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.*

I agree. Given being supporting to all directors of the whole board as to the governance matters and avoiding any undue influence from any one of the directors in complying with the fundamental principles of integrity (be straightforward and honest in all professional and business relationships) and objectivity (not allow bias, conflicts of interest or undue influence of others to override professional or business judgements), this governance practice must be in place for facilitating the company secretary discharging his or her duties.

*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.*

I agree.

*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.*

I agree that the company secretary should report to the Chairman who assumes the leadership in corporate governance matters rather than CEO who focuses more on the day-to-day management in achieving the business plan.

*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.*

I agree.