

## 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.

This is an improvement.

### 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.

This gives clear guidance on what is expected of directors in performing their duties.

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.

Very useful guidelines.

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.

The nomination committee must be responsible to oversee the performance of directors as well as to consider if the company's interests are taken seriously by directors.

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.

This is a good governance procedure. This is also useful for the Nomination Committee and the Board when considering the re-appointment of NEDs.

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.

This is a good governance practice. Also, see comments on Question 5 above.

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.

I doubt if active practitioners in professional practices and experienced business executives in full time employment have sufficient time to be committed and effective NEDs. A company must ensure that directors can devote sufficient time and energy on the company's affairs.

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.

Comments on Questions 5 and 7 also apply.

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 gives clear guidance to would-be directors of what is required of them.

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.

A good governance practice. It also enables the company to assess whether a director has sufficient time to serve the company.

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.

This will ensure that an INED can devote sufficient time to the companies involved, bearing in mind that the bulk of listed companies have December year ends and the possibility of future quarterly reporting requirements.

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

Ten to twelve, on the assumption that an INED will have to commit approximately 12 - 15 working days for each company, i.e. between 120 to 180 working days per annum. This is manageable given the time available for retired professionals and seasoned business executives. For persons who are in full time professional practice / business employment, this number should be reduced. In any event, it should be up to the companies to decide whether or not they are satisfied with the time commitments by INEDs.

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

- Rule
- CP (see comment re RBP preferred)

Please give reasons for your views.

As long as a company is satisfied that an INED appointee has the time and ability to serve as an INED, there is no reason not to allow that INED to serve more than 10-12 companies as suggested in comments on Question 12. However, it would be preferable to have this as a RBP for the time being. This can be moved to a CP over time.

## 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.

Directors should be kept up-to-date on changes in listing rules and other regulatory requirements.

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.

Most INEDs are qualified professionals and / or experienced businessman and should have sufficient knowledge and background to enable them to carry out their duties. Annual updates normally require less than 8 hours. A minimum of 4 hours may be more appropriate.

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.

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 is adequate at present although international practices tend to have a higher proportion. We should move towards achieving a level of 50% over time.

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.

Companies should be given sufficient time to find the appropriate INEDs.

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.

It should be left to the company's Nomination Committee to decide whether they are satisfied with the INED's performance and independence requirements to warrant reappointment. In any event, the re-appointment of directors is subject to approval at the AGM and shareholders would be aware of the number of years a director has been in service prior to approving his re-appointment.

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.

The Nomination Committee should explain why that specific INED is re-appointed for a period exceeding 9 years and still being considered independent.

### 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.

This is a good governance practice. INEDs do not have any independence problem in dealing with executive directors' remuneration.

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.

This avoids conflicts between an Executive Director who is the Chairman of the Remuneration Committee in deciding his own and that of his executive team's 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.

This enhances the authority of the Remuneration Committee in the company's governance structure.

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 empowers the Remuneration Committee to carry out its duties and enables it to be seen as independent.

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

No specific comment.

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.

This adds credibility to the deliberations and decisions of the Remuneration Committee.



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.

Good governance practice.

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.

Good governance practice. Disagreement between the Board and Remco should be made public to shareholders.

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.

This removes problems in determining what “performance base” means.

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.

Good governance practice. This will make the nomination and appointment of directors more authoritative and transparent.

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 ensures independence on the evaluation and selection of directors.

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.

Provides clarity and transparency to shareholders and the investing public.

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 is too rigid if adopted as a CP. The current practice is adequate.

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.

See comments on Question 33 above.

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.

Provides clarity and transparency to shareholders and the investing public

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.

See comments on Question 35 above.

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.

This will ensure that adequate resources are provided to assist the Nomination Committee to fulfil its duties.

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.

This will ensure that the Nomination Committee can carry out its duties with independent external advice, when required.

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.

This can be dealt with by the Audit Committee.

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.

See comments on Question 39 above.

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.

Too much disclosure. The Corporate Governance Report should be adequate.

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.

Too many committees!

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 can be covered by the Audit Committee.

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.

See comments on Question 43. The Audit Committee already comprise INEDs as the majority of its members.

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.

The CFO and Compliance Officer should be in attendance. They may or may not be a director. It is also quite common for one or more of the executive directors to be present at audit committee meetings.

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.

This is a good governance practice. However, one has to be careful not to encourage frivolous complaints.

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.

This gives better communication between the AC and the external auditors.

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.

A good governance practice. Also, see comments on Question 46.

#### 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.

Too cumbersome and may cause problem in defining what "senior management" means.

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.

Better disclosure and transparency.

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.

May be difficult to arrive at uniform parameters for all listed companies and therefore not strictly comparable. Current RBP B.1.6 is sufficient as guidance.

## 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.

Good governance practice and enhances directors' awareness of their responsibilities and duties. However, one must be careful not to embarrass individual directors unwittingly.

**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.

A good practice.

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 have become common communication channels. The amendment is particularly meaningful for companies with international directors.

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.

Better disclosure and assessment of attendance at Board meetings.

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.

A director, particularly NEDs, may not always be able to attend in person, but this does not mean that he is not involved or interested in the Company's affairs.

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.

Gives better disclosure.

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.

Better governance practice.

## 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.

More clarity.

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.

More clarity.

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.

The current RBP A.2.4 is adequate. This RBP is qualitative in nature and it may be too subjective and problematic in assessing its effectiveness if adopted as a CP. Board members may also have different perceptions on the quality of leadership provided by the Chairman.

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.

The current RBP A.2.5 is sufficient to provide guidance to the Chairman on how to conduct meetings effectively.

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.

The current RBP A.2.6. is sufficient to encourage the Chairman to solicit different views from directors. This RBP is qualitative in nature and it may be too subjective and problematic in assessing its effectiveness if adopted as a CP.

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.

Good governance practice and improves communication between the Chairman, NEDs and INEDs.

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.

The current arrangement is adequate. Quite often, this task rests with the Company Secretary and / or the Investors / Shareholders Relations Officer.

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.

The current RBP A.2.9 is adequate. This RBP is qualitative in nature. It may be too subjective and problematic in assessing its effectiveness if adopted as a CP.

## 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.

Improves disclosure and transparency.

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.

Improves disclosure and transparency. Shareholders should know who is responsible for the daily operation of the company.

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.

Shareholders should be made aware of such cases to determine if a director is suitable for re-appointment.

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.

Provides better guidance and clarity.

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.

Provides better information on the company and its governance structure.

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.

See comments on Question 72 above.

## 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.

Directors should have adequate up to date information to assist them in performing their duties.



**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 purely procedural and adds little value to shareholders.

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.

This simplifies the current requirements.

**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 may be too onerous for smaller companies.

## 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 is a must as the requirements are becoming more onerous for directors, particularly INEDs!

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 gives better protection for directors in general.

## 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 enables shareholders to understand the issues better.

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.

Procedurally simpler.

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.

See comments on Question 81 above.

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.

Adds 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.

More flexibility for the Chairman to handle such procedures.

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.

The Audit Committee should be tasked with the ad-hoc/interim removal and appointment of auditors, in addition to their annual re-appointments.

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.

See comments on Question 85 above.

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.

See comments on Question 85 above. However, the out-going auditor should be given the opportunity to make such representation at the AGM following his removal.

#### 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.

Good governance practice.

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.

Too regimental if adopted as a CP. In any event, I believe most directors already contribute to the strategic and policy development of the companies' they serve.

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.

Good governance practice.

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.

Good governance practice.

#### 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.

The auditors should present their report to shareholders in person at the AGM as well as responding to questions from shareholders on their conduct of the audit.

## 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 sets out the guidelines and the manners for which communication between the company and its shareholders are to be dealt with.

## 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.

Gives more transparency to shareholders.

### 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.

Better disclosure and transparency.

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 may encourage frivolous nominations and waste company resources.

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.

Logical as this follows the comments on Question 95 above.

**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 post requires professional qualification and experience. However, external service providers to serve as company secretary should not be allowed as it is unlikely that the service provider will have sufficient in depth knowledge on the day to day operation and affairs of the company. Also, as the same service provider may be acting for a number of companies, it may not be able to devote sufficient resources to one particular company. If the HKSE were to permit external service providers to act as company secretaries, it would be advisable to limit the number of companies for which they or any named individual could serve.



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.

No further comment. Also see comments on external service providers on Question 98 above.

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.

No further comment. Also see comments on external services providers on Question 98 above.

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.

No further comment.

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.

No further comment.

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.

No further comment.

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.

A shorter transition period of say, within 2 to 3 years, is preferred.

## 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.

This will give clear guidelines as to what is expected of a company secretary.

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.

See comments on Question 105 above.

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.

No further comment. However, see comments on Question 98 regarding appropriateness of external service providers.

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.

The appointment of an external service provider as company secretary is not appropriate. The company secretary should be a full time employee / officer of the company as described in Paragraph 363 of the Consultation Paper. It is also advisable to limit the number of companies a particular service provider and the named contact person could serve as company secretary.

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 is a senior position and the company secretary should be made answerable to the Chairman of the Board or the CEO.

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.

It is important for Board members to meet the company secretary prior to his / her appointment. A physical board meeting is a good platform for this.

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.

No further comment.

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.

Good governance procedure.

**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.

No further comment.

## 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.

No further comment.

## 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.

No further comment.

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.

No further comment.

- End -