

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 agree with the need to have the various rules and codes written in a plainer style so that they can be more easily understood. However, in respect to the second part of Question 1 we would need to see all proposed amendments to the Listing Rules before we can comment further on the possibility of the plainer writing amendments initiative creating unintended consequences. Where we have drafting comments on the available amendments we have provided them in our responses below.

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.

While we obviously welcome any initiatives that provide directors with further clarification on their responsibilities, we do not agree with all of the proposed change to Rule 3.08. Taking each of the major parts of the proposed amendments in turn:

“Directors do not satisfy the required levels of skill, care and diligence by delegating their responsibilities to colleagues or management in the issuer”: This part of the proposed amendment suggests that board members are not to rely on management. Here, we are unclear as to the exact intention of the amendments, given that management are fulltime experts in respect of the issuer’s business. If the intention of the proposed amendment is to say that the non-executive directors must not rely ‘unduly’ or ‘recklessly’ on executive management without a due level of monitoring and stewardship – what we would call the ‘governance role of the Board’ - then this should be said with clarity and precision.

“Note”: The concept of ‘such skill, care and diligence as can reasonably be expected of a person of his knowledge and experience’ is retained in the proposed amendment, but the attempt to ‘clarify’ it seems to muddy the water instead of providing a more precise substitute. The old criterion is retained, but the issue must be what the Exchange sees and defines as the requirements of the Rules, and not what the courts “generally consider.” Directors are entitled to a considerable measure of certainty as to what is required, and to the extent there is something more onerous being introduced by the Exchange, there is a need for an explicit definition of the ways in which it is made more onerous. Such a definition should be spelt out in the Rules, and not deduced by reference to secondary materials. This is because it seems wrong in principle that materials prepared as guidance by third parties is given the status of the Rules (see further our response to Q.3 below.) Also, the idea that in determining standard of care, skill and diligence there is a distinction between full-time executive directors and part-time non-executive directors does not seem entirely consistent with the position at common law which may be viewed as suggesting that the duties of a director whether executive or not are the same, at least in circumstances where there is serious shortcoming (see *Dorchester Finance Co Ltd v Stebbing* [1989] BCLC 498, *Daniels v Anderson* [1995] 13 ACLC 614.)

“At a minimum, they must take an active interest in its affairs and obtain a general understanding of its business. They must follow up anything untoward that comes to their attention.”

We agree with this part of the proposed amendment as we believe these are reasonable expectations of the role of directors and consistent with 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.

We are of the opinion that if a particular issue is to be covered by a Rule then what is expected needs to be fully spelt out within the Rule itself and not to be deduced by reference to and interpretation of a variety of material produced by third parties.

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.

We consider it incorrect to focus heavily on actual time spent by a director on an issuer's business as being a reasonable indication of a particular director's contribution to the business and ability to perform his/her responsibilities. Such a measure takes no account of the quality of mind, applied judgement and diligence of the individual. It also comes across as inconsistent with the idea in Questions 2 and 3 that an NED must spend as much time as is required. If applied then we do not see how a nomination committee would be able to define in advance of recommending a director's appointment the amount of time that director should devote to the role.

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.

As stated earlier in our answer to Question 4, we do not believe that trying to measure the time spent on an issuer's business necessarily or appropriately reflects the contribution made by an individual director. It should be recognised that the time required for a task differs amongst individuals with different skill sets and abilities. Also, were such a CP to be introduced, it is difficult to see how such confirmations could be objectively reviewed by the nomination committee.

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

X No

Please give reasons for your views.

<p>Our response to this question follows on from that made to Question 5 – if we do not consider an annual confirmation by directors is appropriate then it follows the disclosure requirement is not relevant. On grounds of practicality we question what part a self-certification approach as opposed to peer judgement could usefully play in such an approach to corporate governance and sound management of a board.</p>
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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

X No

Please give reasons for your views.

We do not see that a single general rule can cover the completely different circumstances of 'full time' executive directors and part time non-executive directors.

In the case of non executive directors it is usually of the essence of the appointment that the directorship is an ancillary call on the time of the individual to a major 'full time' executive role in another organisation. Whether the assumption of each additional non executive directorship is compatible with other commitments to the prospective director's main job, other non executive directorship or other public roles (eg as advisers to government) is in our experience usually a matter subject to investigation, discussion and careful evaluation by the nomination committee before a decision to appoint is made.

As the ability of one person differs to another, as does the time required for one professional commitment to another, it seems inappropriate to single out professional commitments and other board memberships as commitments requiring limitation.

Further, it should be recognised that there may be an issue of finding a sufficient number of directors if each person is asked to limit his/her number of directorships, particularly if we take into account the other proposals that increase the number of INEDs to at least one-third and the expanded duties of INEDs. As such, we consider the existing CP to be sufficient.

In the case of executive directors participation in the affairs of the board *qua* director is usually subsumed into the overall letter of appointment as an executive employee or his/her statements of accountabilities as agreed from time to time: failure to devote adequate time is not a live corporate governance issue.

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.

Following on from our answer to Question 5, we do not agree that such an annual certification process is appropriate or necessary.

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.

Following on from our detailed answer to Question 4, we do not consider it appropriate for RBP D.1.4 to be upgraded 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 commitments.

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.

We agree that the directors should keep the issuer informed on a timely basis of any changes in their significant commitments though we would word the requirement more precisely as 'any material change to the commitments already advised'. This is consistent with the director's duty and agreement to devote sufficient time to the issuer so it is fair to put the onus on the director to keep the issuer informed of such changes, and it may not otherwise be easy for the issuer to find out about the change. We would also stress that it is not so much the taking up of formal positions that is the problem. For example, a new directorship at another listed company would be known around the time of appointment. It is taking up new roles within existing appointments which is the real issue. The difference between the time commitment of an INED with no committee chairmanships and one who is the Chairman of the Audit Committee is material in any context

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.

An individual should be able to decide if he/she has sufficient time to fulfil all of his/her commitments and duties required by the law and the Rules. Given this, there is no need to put on any numerical limit on INED positions he/she can hold. We would expect that individual boards, if they so choose, will also take into account the other commitments a person may have when looking to appoint them to an INED position. In addition, it should be recognised that INED positions and responsibilities vary from company to company and so it will be difficult to compare one with another. Given the above, we don't consider that the imposition of a numeric limit in this area is appropriate or practicable.

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

Not applicable given our answer to Question 11.

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.

Not applicable given our answer to Question 11.

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)?

X Yes

No

Please give reasons for your views.

We agree that it is important for all directors to engage in the continuous development of their skills. Accordingly we agree that the current RBP be upgraded to a CP.

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.

We agree that, notwithstanding some of the skills required for a director - in particular those involving judgment - are hard to acquire at formal training and therefore formal training should not be over-emphasised, it would be useful to set down a "minimum hours" number as this would set a clear guideline for the directors. It is difficult to comment further on whether to set that minimum at 8 hours is appropriate. We would also stress that we consider that directors should be responsible for maintaining their own skill levels and therefore should devote as much time to this task as they consider 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.

Relevant external courses, internal courses and briefings (either at a company or board level), relevant experience gained in own industry (e.g. accountants, lawyers etc.), attendance at relevant industry conferences, on-line training, own research and reading are all considered to be acceptable training methods.

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.

We agree that given the duties imposed on INEDs, it's important that every issuer has a sufficient number on which it can call upon to fulfil such duties. Having a minimum of one-third of the directors as INEDs also helps provide additional protection for the interests of an issuer's minority shareholders and seems in line with the minimum requirement amongst peer markets/exchanges. However, it should be recognised that anecdotal evidence suggests finding a sufficient number of suitable candidates to be INEDs is a challenge for many issuers and one that becomes increasingly difficult as the obligations are made more prescriptive via generic Rules.

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.

We consider that a transition period to 31 December 2012 is necessary to provide sufficient time for issuers to ensure compliance whilst maintaining due regard for the calibre of candidates appointed to INED positions, especially so given the increasing challenges referred to in our answer to Question 17.

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 upgrading of the current RBP to a CP. Given the possible perception of compromised independence if an INED retains his/her position for a considerable number of years, shareholders should be given the chance to decide and if thought appropriate endorse the 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.

Currently under Rules 3.11-3.13 there is a need for each INED to provide a confirmation of independence to the Exchange and to notify the Exchange as soon as practicable of any change in circumstances that may affect his/her independence. Given such vetting, we believe that there is no need to upgrade the current RBP to CP status.

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.

We consider it advisable for all issuers to establish a remuneration committee and therefore support this CP becoming a Rule.

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.

We agree that a remuneration committee should be chaired by an INED. This will help demonstrate the independence of the remuneration committee from any majority owners of the issuer.

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.

Yes. We consider that all board committees should have written 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.

We consider this proposal reasonable and this is in line with the treatment proposed for audit committees. The words “A listed issuer shall immediately inform the Exchange” and “in accordance with Rule 2.07C”(see our answer to Q. 113) should be added, to avoid any ambiguity when read with Rule 3.23 and elsewhere in the Rules.

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

Please give reasons for your views.

Yes, three months should be a sufficient period of time to make the necessary adjustments. Beyond that, if it becomes a breach of the Rules then the ordinary process for addressing breaches applies.

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.

Yes, it would be appropriate that a remuneration committee seek independent advice if the committee members consider it necessary to enable them to discharge their duties.

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.

Yes, as this gives greater flexibility to issuers to structure their remuneration committees as appropriate for their needs.

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) X Yes No

(ii) X Yes No

Please give reasons for your views.

Re (i): If any unresolved disagreement exists, then it should be brought to the attention of the shareholders so that they can take desired action. Having disclosure in the Corporate Governance Report is logical, notwithstanding that an INED may be discouraged from opposing the will of the majority unless he is prepared to resign from the board.

Re (ii): If there is such a disagreement then steps should be taken to ensure that it is reported, therefore making this a CP is appropriate.

We would point out that it is only under the operations of the Model B version where we can see circumstances where there could reasonably be a presumption that the disagreement is driven by self-interest rather than a straightforward difference of views when: (i) the remuneration in question is that of the CEO, senior management or perhaps the chairman; and (ii) there is a majority of executive directors on the board. It would be logical to restrict any requirement for disclosure to cases that meet these two criteria.

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?

X Yes

No

Please give reasons for your views.

In light of explanation provided in paragraph 118 we agree with this deletion.

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.

We consider it appropriate that all issuers should establish a nomination committee and so we agree with the current RBP being upgraded to a CP.

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.

Whilst we have no strong view on this issue, we consider that the chairman of the nomination committee would be seen by investors to be better placed to resolve potential conflicts within the committee if he/she were an INED.

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.

We agree that if the establishment of a nomination committee be upgraded to a CP then so should the need for written terms of reference.

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

We consider that the framework of any board should aim to provide a sound platform for stability of governance. We believe that any reviews should be performed as and when required by the board itself or the chairman/CEO rather than be made necessary on an annual basis. If a regular review requirement were to be introduced, then at three to five yearly intervals would be appropriate to the demands of corporate governance and board stability.

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.

(Word should be "complement" and not "Implement" – see paragraph 132.)

We would prefer that the reference to the "structure" of the board be explained.

We are also unclear as to what the additional phrase "to complement the issuer's corporate strategy" is referring to. We would like to understand what issues the Exchange is intending to address with this additional wording as it is not explained in the Consultation Paper. We would point out that we consider that any review of the board performed by the nomination committee would naturally need to take into account the actual strategy of the business as the board will need to be 'fit for purpose'. As such, we don't consider that this situation needs to be specifically stated as a CP.

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.

We agree that it is appropriate to upgrade this RBP to a CP for the reasons outlined in paragraph 128 to promote consistency in the market.

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.

We agree to this proposed CP so as to address the concerns raised in paragraph 128.

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.

Agreed. We consider it reasonable that all committees be afforded sufficient resources to be able to carry out their 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.

We consider it reasonable to include such a clarification, especially given our response under Q.37

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

We consider that the five duties listed in paragraph 141 represent aspects of corporate governance that should be covered by the board, as it is at this level that such corporate governance issues should be addressed. We firmly believe that good corporate governance is a matter for the whole board and relevant personnel of the company. We do not consider it appropriate for this important subject to be delegated down to a board committee.

Please give reasons and alternative suggestions.

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

X No

Please give reasons for your views.

As stated in our answer to Question 39, we do not consider that the duties mentioned in paragraph 141 should be undertaken by committees of the board. However, if such an approach is adopted then it should be sufficient for the respective committee chairmen to make regular reports to the boards (these can be verbal and for the board to have full access to the committee minutes) on the matters discussed rather than there being a formal annual written report.

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

X No

Please give reasons for your views.

Question presumably refers to report in paragraph 142 and not 140 as stated.

Given our answer to Question 40 above there will be no actual report to include in the corporate governance report. We regard the board's responsibility for the totality of corporate governance as a core function and its corporate governance report as the definitive and comprehensive annual document.

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

Yes

X No

Please give reasons for your views.

As mentioned in our answer to Question 39, we do not consider that an issuer should establish a corporate governance committee because we do not believe that it is appropriate for a board to delegate responsibility for corporate governance in the manner proposed.

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

X No

Please give reasons for your views.

Regarding the duties listed at paragraph 141 (b), we see no natural 'home' amongst the existing committees. Whilst it may be possible to have the audit committee consider certain of the duties (for example those listed under paragraph 141 (e)), this would require a widening of its scope and so may lead to a lack of clear focus.

In line with our view that corporate governance issues are a matter for the whole board, our preferred solution would be to deal with all of the matters listed under paragraph 141 at a board level rather than a committee level.

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

X No

Please give reasons for your views.

As mentioned in our reply to Question 39, we do not consider a committee approach is appropriate.

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.

As mentioned in our reply to Question 39, we do not consider a committee approach is appropriate.

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.

We agree that the RBP be upgraded to a CP. We consider it is important that issuers should establish the appropriate structures whereby employees are, in confidence, able to raise concerns about possible improprieties in financial reporting, internal control or other matters. However, such arrangements should contain adequate safeguards for the audit committee to act as it sees fit in the event of receiving repeated, vexatious or malicious allegations. We would appreciate knowing what the limits of 'in confidence' are in such instances.

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.

Agree, indeed given the various rules and recommendations surrounding interim and final results announcements its difficult to think of an issuers audit committee not meeting with the external auditors at least twice a year.

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

X Yes

No

Please give reasons for your views.

Yes, we agree with the new RPB, subject to the same concerns we raise in our answer to 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

X No

Please give reasons for your views.

We do not see what additional benefit providing such information gives to our investors. We consider that given the remuneration of the senior management team is to be reviewed and approved by the remuneration committee investors can be assured that the appropriate controls are in place over them. There has to be a balance between information to the public and protecting the privacy of individuals and commercial confidentiality. In particular, for issuers with a small number of senior management, the compensation of these individuals can be easily deduced even if disclosed by band. Cases abroad (e.g. in the US) have shown how the information can lead to security issues for the individuals concerned as well as their family members. Existing disclosure requirements are fully adequate.

We would suggest that if the proposal goes ahead the Exchange might also consider removing the need to disclose the aggregate amount paid to the five highest paid individuals given that for most issuers there will be considerable overlap between such figures and those within the proposed directors, CEO and senior management disclosures.

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.

Our answer to Question 49 was “No”

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.

We agree that it would be in the interests of investors to know the remuneration package of the CEO. As one of the key members of the company, it is fair for investors to have better information on how he/she is compensated and incentivised.

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.

Yes. It is reasonable to tie in the executive directors’ remuneration to business performance to better align the interests of executive directors and shareholders. However, the remuneration should also be linked to relevant market comparators.

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.

We consider this to be a reasonable approach to adopt.

We would, however, question the legitimacy of the final sentence in paragraph 177. We consider that it would be inappropriate to link the remuneration of INEDs to any form of performance criteria as their presence on a board is to provide a balanced and objective check to those executive directors paid by reference to results.

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

X No

Please give reasons for your views.

If a director does have a conflict of interest in a material matter then we would expect them to abstain from any discussion on the matter and also from voting. To achieve this doesn't just mean we need to have a physical meeting to discuss the item – they can abstain by means of not signing the written resolution. Another reason for our view is that if there is known to be unanimity amongst the non-conflicted directors over the issue in question than dealing with the matter by means of a written resolution is an efficient and acceptable method.

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?

X Yes

No

Please give reasons for your views.

This is a reasonable approach to adopt in today's world where issuers and their personnel/directors may frequently operate across boundaries.

- 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.

We agree that it is appropriate that only attendance at physical board meetings (including attendance by electronic means) should count for attendance record purposes. Also it is appropriate that the attendance of newly appointed directors should be measured against meetings held since appointment.

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.

We agree with the proposal that in cases where a director has appointed an alternate it is appropriate for the attendance records of the director and his alternate to be disclosed separately. Furthermore, in compiling the numbers for disclosure we agree that the attendance by the alternate director should not be included in the numbers disclosed by the related director.

We would also suggest that the Exchange give consideration to ensuring that any alternate director can only be appointed by agreement of the board of the issuer.

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.

Yes. This will provide the appropriate transparency of board meeting attendance to investors.

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.

A 5% test is not necessarily determinative and material interest can exist even where a director beneficially owns less than 5% in that company (cf Rule 13.44.) We consider that even if a director is beneficially interested in only 5% or less of a company with which the issuer contemplates a transaction, that interest may nevertheless create a material interest in the proposed transaction, and so the director should not vote on it. The issue should be whether the director has a “material interest” having regard always to the context and the current exemption may be misleading.

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.

We agree to the removal of the words “at the board level” as it clarifies the overall intention of the Code Principle.

We would also suggest that the Exchange also consider removing the words ‘day-to-day’ which we believe targets something which happens way below the CEO level in a large organisation. A much clearer delineation would be achieved by contrasting the chairman’s ‘management of the board’ and the CEO’s ‘management of the business operations of the company’ or better still ‘strategic and operational management of the company.’

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.

We agree that the proposed additional words will provide greater guidance as to what can be considered to be 'best practice' for board papers.

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.

We agree with the upgrade. We consider it appropriate for greater emphasis to be given to the leadership responsibilities and duties of 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.

We agree with the proposed upgrade and amendment. In addition we would comment that whilst it is reasonable to expect a chairman to take the lead in such matters it should be recognised that establishing good corporate governance practices and procedures is a matter for the whole board.

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.

We consider the upgrade to be reasonable.

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.

We agree with move to CP status. However, we do not agree that separate meetings with INEDs and NEDs should occur, preferring that there simply be a meeting held without the EDs being present. We do not see the advantage of splitting out INEDs from NEDs for such meetings.

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

We agree with this upgrade.

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.

We agree with this upgrade

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.

We consider that the information required under Rule 13.51(2) will be of no interest to investors in the cases mentioned given that the persons concerned are exiting their roles. Accordingly, we do not agree to the amendment proposed.

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.

We agree to the amendment. It is important for investors to be made aware of such a change, to the extent of the information required in Rule 13.51(2).

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.

We agree with expansion of the circumstances to include all judgements and not just those towards particular companies, business enterprises or their members given fraud, breach of duty or other misconduct involving dishonesty is involved here.

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.

We agree with the amendment to avoid mis-interpretation by the market and give effect to the intention of the rule.

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.

We agree to the upgrade from RBP to CP.

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.

We consider that producing the required information on our own website should be sufficient. We do not consider that a centralised database will be of much use to investors, particularly as each issuer may adopt their own format for including such information.

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.

We agree that directors should be provided with updates such as those included under CP C.1.2 but consider that it is up to an individual board to determine how frequently it wishes to receive such reports. For certain issuers, the production of monthly updates may be difficult as well as somewhat meaningless given a potential lack of timely data in key areas.

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.

We agree to this change as it will simplify the current disclosure rules.

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.

We consider that the explanation put forward under paragraph 243 for the proposed amendment is reasonable

10. 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

X No

Please give reasons for your views

Whilst we understand the desire for such information to be disclosed we consider that such disclosure would be better handled as a RBP at this stage with a later review to occur to see how disclosures have subsequently occurred in practice.

11. 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)?

X Yes

No

Please give reasons for your views.

We agree to the proposed upgrade to a CP. This will help ensure the availability of D&O insurance becomes standard, and offers protection to shareholders and other plaintiffs in the event that the company is unable to satisfy a judgment. It should be noted that where a D&O insurance policy is an "excess" policy issuers are not protected by such policy as the insurer only steps in to indemnify the directors after the issuer's indemnity for the directors is exhausted.

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)?

X Yes

No

Please give reasons for your views.

We agree to the added words.

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.

We agree to the proposed amendment as it will give more clarity and transparency in respect of general meetings.

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.

We agree. For such simple matters a vote on show of hands will be easier to organise and count.

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.

Yes, all of the examples given are reasonable examples of situations where the amendment to Rule 13.39(4) could be useful.

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.

Yes. Any step which will provide shareholders with greater transparency and information over the results of poll votes is appropriate.

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 that providing shareholders with details on how the voting process is to be applied should be done immediately prior to the first vote taking place.

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.

We agree that the appointment of auditors should be subject to shareholder approval.

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.

It is logical that if the shareholders are required to approve the auditor's appointment then they should be called upon to decide on their early removal. However, if the early removal is due to a non-contentious event – for instance if the auditors independence has been compromised such that they cannot continue with their audit – then the board should be able to deal with the matter itself and seek ratification at the next AGM.

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.

We agree. If auditors are to be removed then shareholders should receive full information from both parties on the reasons behind the 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.

We agree that to the upgrade of the RBP to a CP.

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.

We consider that making such positive contributions is a fundamental duty of all directors and therefore do not think that this issue needs to be dealt with as either a RBP or CP directed at NEDs in isolation.

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.

We agree shareholders should be provided with information on directors' attendance at meetings. Given that such meetings represent the only formal opportunities for the board to physically interact with the issuer's shareholders any initiative which helps to promote directors attendance is to be encouraged.

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.

We agree, but subject to this being made clear that it apply to the chairman of 'any other board committee'.

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.

We agree. Given that shareholders appoint the auditors it is appropriate for them to have the opportunity to formally question them on their work. However, we would point out that which accounting policies to use are for the board to decide upon and not the auditors.

We would also ask that the appropriate body consider making attendance of an issuer's annual general meeting an obligation on the auditor when the HK companies Ordinance is next revised.

Finally, we would ask that the Exchange also consults with the relevant professional accounting bodies to ensure that it provides its members with suitable guidance as to what will be required of them when attending an issuer's annual general meeting.

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.

Yes. We consider it reasonable to improve communications on this issue so that shareholders are made fully aware of their rights.

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.

We believe communication with shareholder should be a standard practice for any listed company. We do not see the need for establishing an official shareholder communication policy at the board level.

Nowadays, listed companies compete for capital on a global basis and should understand that ensuring effective and timely dissemination of information to shareholders is a key success factor. If they do not have the necessary procedures in place, they will lose shareholders' trust and will be punished by the capital market ultimately.

A board-level shareholder communication policy is not a panacea. It is much more important to put words to action. Since most listed companies in Hong Kong have company secretariat, corporate communications and investor relations departments that work together on shareholder communications, we believe establishing a formal communication policy at board level is not necessary

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 agree. This will lead to a more accessible central depositary for this important document.

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.

We consider that this information will already be available if we comply with the new Rule 13.90.

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.

In making any significant change in the issuer's articles of association, the issuer will already have had to seek shareholders approval and so such people will already be aware of the changes when they occur. We agree that it will be appropriate to make such disclosures in an issuer's next annual report provided the reference is brief.

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.

We agree. The proposed changes provide greater clarity.

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.

We agree. The proposed list set out in paragraph 345 is reasonable and in line with the current Rule 8.17.

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.

We agree. In addition the Exchange may also want to consider experience gained in company secretary positions in other relevant jurisdictions.

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.

We consider that the most appropriate place to base a company secretary may be the location of the corporate headquarters where senior management operate from. This may not necessarily be in Hong Kong and so we agree to the removal of the present requirement.

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.

Yes. We consider that there should be a common set of rules and requirements for all company secretaries to have to adhere to.

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 agree with the proposal provided that it is also emphasised that company secretaries are responsible for keeping themselves 'up to date'.

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

Yes

X No

Please give reasons for your views.

We expect that a '15 hour' rule should be applied to everyone straight away. Allowing effectively up to 6 years for certain people to comply doesn't seem reasonable or appropriate.

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?

X Yes

No

Please give reasons for your views.

We consider this advisable given the importance of the role.

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?

X Yes

No

Please give reasons for your views.

We agree with the proposed principle as it provides a succinct description of the role played by a company secretary.

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.

Whilst we agree with the proposed CP to the extent that the company secretary should be a full time employee of the issuer, we do not agree with the second part of the proposed CP. We consider that the phrase 'and have knowledge of the issuer's day-to-day affairs' is inappropriate (i) on account of its vagueness. How much knowledge of which day to day affairs? In what depth? For what purpose? (ii) whilst company secretaries are likely to have extensive knowledge of major corporate matters by virtue of their participation in board meetings and the like, there is nothing intrinsic to their role that requires knowledge of day-to-day (ie operational) affairs, which may well be taking place in countries remote from the head office.

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.

Yes. We consider that there should also be a formal contact point within each issuer.

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.

Whilst we recognise that a company secretary is an officer of the company and that therefore it is right for him/her to be formally appointed and replaced by board resolution, we believe that the questions of selection and dismissal are executive matters.

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.

We would also allow such decisions to be taken by written resolution.

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.

Whilst the chairman or CEO is obviously candidates for the company secretary to report to, it should also be recognised that in many organisations the company secretary may report to either the CFO or general counsel. We believe that such alternative reporting lines remain appropriate and so do not agree with the proposed CP which we regard as being over-prescriptive without due justification.

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.

If we are to move to a position where we are putting minimum training time requirements on directors (see question 15) then it may be appropriate to have the company secretary be responsible for collecting the appropriate submissions from directors.

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

X No

Please give reasons for your views.

We consider it appropriate to keep present format so that specific mention of 2.07C is made each time so that market participants are fully aware what is meant.

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”?

X Yes

No

Please give reasons for your views.

Such an extension of contact details is reasonable.

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?

X Yes

No

Please give reasons for your views.

It is appropriate to have such matters contained under a single part of the Listing Rules.

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

X Yes

No

Please give reasons for your views.

We agree.

- End -