



18 March 2011

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

BY EMAIL (response@hkex.com.hk)

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

Dear Sirs

We refer to your letter dated 17 December, 2010 (Your Ref. : MD20101217023) regarding the Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules (the "Consultation Paper"). Capitalised terms used herein have the same meanings as in the Consultation Paper, unless otherwise stated.

We are in full agreement that INEDs must take an active interest in the issuer's affairs, obtain a general understanding of its business and follow up anything untoward that comes to their attention (paragraph 49, Consultation Paper). We also agree that an INED must devote to the issuer sufficient time and attention, using his skills, judgment and experience. As such it is important that an INED keep the issuer informed of his other professional commitments and acknowledge to the issuer that he will have sufficient time to meet his obligations to the issuer (paragraph 55, Consultation Paper). We have some concern, however, about the statement in paragraph 55 that an INED should limit his other professional commitments. It is not immediately clear to us how this statement is to be construed. Naturally, if an INED is to devote sufficient time and attention to the issuer, it goes without saying that he should critically assess the demands of his commitments and satisfy himself that he is able to devote to each of those commitments the time and attention that they require. If not, he must revise his commitment portfolio. We trust this is what the statement means as otherwise the statement could be unworkably prescriptive.

As well, we fully support your recommendation that the nomination committee has the responsibility of regularly reviewing the time required from a director to perform his responsibilities to the issuer and whether, as per an INED's annual confirmation that he has spent sufficient time on the issuer's business, he has indeed done so (paragraph 53, Consultation Paper, and Questions 5 and 6). This would make clear the responsibility and accountability of both the INEDs and the nomination committees.



We do however have strong reservations about the suggestion that the Code of Practice or the Listing Rules impose a rigid limit on the number of INED positions an individual may hold (paragraph 58, Consultation Paper and Question 11). Hong Kong is a developed market and our rules and practices are in line with international standards. For a developed, matured market, the standards and principles should be clear, but it is not the regulator's job, indeed it would be micromanaging, to dictate to market players the exact logistics as to how they should meet those standards. We note that the CSRC, the regulator of the Mainland market, has issued guidelines, which state that, "in principle, independent directors can only hold concurrently the post of independent directors in five listed companies at a maximum" (paragraph 48, Consultation Paper). The Mainland is a developing market. In regulation, market development and sophistication, we are not aspiring to follow the Mainland; it is the other way round. It would be going backwards if we now adopted for our market this type of prescriptive limit, which seeks to substitute the regulator's one-size-fits-all rule for what should have been a dynamic balancing process which is the responsibility of issuers, their boards and shareholders.

You have already set out clear standards expected of INEDs and nomination committees. Directors are required to make sure that they have sufficient time to meet their obligations (paragraph 40, Consultation Paper). You have also proposed requiring the letters of appointment to set out the time commitment expected of directors (paragraph 41, Consultation Paper), and that a director disclose to the board his other significant commitments at the time of his appointment and any subsequent changes to these commitments after his appointment (paragraph 41, 42, Consultation Paper). Why should these not be sufficient as guiding principles for the market? In assessing an INED's ability to devote sufficient time and attention to the issuer's business, the nomination committee must have regard to the skills and expertise of the individual INED, the skill mix and composition of the board and the general and specific needs of the issuer. This is a dynamic assessment which can only be made upon taking into account different variables. The imposition of a simplistic formula that presupposes that if a director held more than a pre-set number of appointments then he could not be devoting sufficient time and attention would not help this assessment. To the contrary, it seriously circumscribes the nomination committee's freedom in selecting the best and most suitable INED candidates. Moreover, it masks the key issue, that whether an INED is putting sufficient time and attention to an issuer's business could not be judged in a mechanical manner. The assessment, at the end of the day, is qualitative, not quantitative.

If the concern is whether the INED has discharged his duties properly, or whether the nomination committee has properly performed its selection and assessment functions, then the solution should be put in place a framework whereby the INED and the Nomination Committee could be held to account for their performance. We believe your recommendation that an INED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business (paragraph 55, Consultation Paper), and that the nomination committee should disclose in the issuer's corporate governance report that it has received and reviewed the INED's annual confirmations (paragraph 54, Consultation Paper), would provide the necessary accountability measures.



We note that professionals, such as lawyers and accountants are required to devote sufficient time, care and attention to their clients. Yet they are not restricted as to the number of clients/cases they may handle at any given time. Putting any such restriction on them would not make sense, and is completely against free market principles. The same logic would apply to INEDs.

For the above reasons, we would urge the HKEx not to set a limit on the number of INED positions an individual may hold. Our pool of able and willing independent directors is already very tight. HKEx should refrain from making that pool even tighter. That could end up hurting issuers and their shareholders.

We are happy for this response together with our name to be published as part of your consultation conclusions.

Thank you very much for your kind attention.

Yours faithfully
For and on behalf
ITC CORPORATION LIMITED
(Stock Code : 372)