

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.

Agree to the idea of plainer writing amendments.

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.

Agree that directors 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. This helps promote the development of higher corporate governance standards for Hong Kong as a whole (the 'Objective').

Disagree to provide guidance to directors in a Note to the Rule by referring to the guidance issued by the Companies Registry and Hong Kong Institute of Directors. It is preferable to state the principle in a general form.

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.

Please refer to the response to Q2.

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.

Disagree. It is not the number of hours that a director spent that determines whether he has properly discharged his duties as a director. The proposed principle set out in Q2, in addition to the existing Rule 3.08, is adequate. Disagree therefore, to the proposed duty in the nomination committee's terms of reference as well as the disclosure requirement in the Corporate Governance Report.

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.

Please refer to the response to Q4.

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.

Please refer to the response to Q4.

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.

Disagree. The existing Code Provision A5.3 already states that every director should ensure that he can give sufficient time and attention to the affairs of the issuer and should not accept the appointment if he cannot do so. Directors should make his own judgement, underpinned by the requirement that they should act in the interest of the issuer as a whole.

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.

Disagree. Please refer to our response to the previous questions.

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.

It is not practical to set out expected time commitment of a NED in his letter of appointment, given that business environment and the company's need may change quite considerably over time. It is therefore not a question of upgrading a RBP to a CP but rather the need of this requirement at all.

Question 10. Do you agree to upgrade 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.

Agree only to the proposed change to encourage timeliness of disclosure by a director to the issuer on any change to his significant commitments. Disagree to upgrade it from the RBP to a CP.

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.

No. As mentioned above, directors should make their own judgment. The statistics in para 39 of the Consultation Paper do not seem to trigger a need for imposing a limitation.

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

Not applicable.

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.

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.

No. We support the principle of continuous professional development on the part of directors. However, it is not necessary to be that prescriptive as suggested. Setting out the minimum number of hours of directors training to eight may not achieve the Objective either. In our view, it should be a matter for the issuer to work with individual directors (bearing in mind that the background, area of expertise and therefore the training needs of directors could be quite different).

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.

No. Please refer to our response to Q14.

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.

Agree that training methods should not be limited to classroom training. The methods outlined in para 66 of the Consultation Paper are practicable and therefore acceptable.

We believe training needs and methods of training are matters for the issuer to decide by joining hands with individual directors.

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.

Agree to upgrade RBP A3.2 step by step to a CP (and then as a Rule at a later stage). This is to balance the Objective with the practical difficulty of identifying quality INEDs. At the end of the day, it is believed that it is the quality rather than quantity of directors that counts.

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.

Please refer to our response to Q17. The transitional period as suggested could apply to the upgrading from RBP to a CP (instead of to a Rule).

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.

Yes. This is in view of the Objective and against the background of a number of family controlled issuers in Hong Kong.

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.

Yes. This is in line with the Objective.

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.

No. It is believed that the proposal of requiring the remuneration committee to be chaired by an INED (i.e. Q22) but not also the proposal of moving the requirement for establishing a remuneration committee with a majority of INED members from the Code to the Rules, is an adequate arrangement.

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.

Yes. Please refer to our response to Q21.

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.

No. This follows the view highlighted in Q21.

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.

No. This follows the view highlighted in Q21.

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

Not applicable given the response to the relevant questions above.

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.

Consistent with other parts of the Code.

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.

No strong view to this proposal.

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.

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.

For the reason stated in para 106 of the Consultation Paper.

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.

Yes. Nomination Committee is indeed a cornerstone upon which future success of an issuer and its board is founded. The proposal is also in line with the Objective.

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.

Yes, for the reason outlined in the response to Q30.

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.

Yes, for the reason outlined in the response to Q30.

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.

No. It is believed that the upgrading of (i) establishment and composition of a nomination committee, (ii) chairman should be an INED and (iii) terms of reference from the RBP to a CP, is already a solid step forward in the light of the Objective. It may not be necessary to also upgrade the RBP of requiring the nomination committee to review the structure, size and composition of the board at least once a year. This should be a decision for the nomination committee to make on a need basis.

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.

No. Issuer's corporate strategy is for the board and/or the management to implement. However, it is agreed for its nomination committee to review the structure, size and composition of the board in line with (and therefore to help implement) that strategy.

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.

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.

It is believed that posting of the issuer's terms of reference on its own website (rather than also on the HKSE's website) will have served the purpose.

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.

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.

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.

We consider that the market should be first consulted on the proposed establishment of a corporate governance committee, and then the proposed terms of reference.

Secondly, since corporate governance (as distinguished from the functions of nomination, remuneration and audit committees which are more specific) involves a much wider spectrum and is the backbone of an issuer, it should be a matter for the board as a whole.

Establishment of a corporate governance committee should only be a RBP, and remain to be so in future.

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.

Please refer to the response to Q39.

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.

Please refer to the response to Q39.

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.

Please refer to the response to Q39.

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.

As mentioned above, corporate governance is a matter for the board.

Based on that, it is agreed the duties of existing committees can be expanded to include some duties of a corporate governance committee (e.g. policies and practices on compliance with legal and regulatory requirement). It is also possible to expand the existing internal control measures of an issuer to cover some of those duties.

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.

No, for the reason stated above.

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.

No, for the reason stated above.

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 have no special view on the proposal.

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.

We have no special view on the proposal.

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.

No. Whistleblowing policy, if needed, is a matter for an issuer (rather than its audit committee) to establish and/or monitor.

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.

It is believed that the current requirement of disclosing in issuer's financial statements its directors' emoluments for the past financial year by name, and the requirement of disclosing the aggregate amount paid to the five highest paid individuals of the issuer, on a no name basis, are adequate.

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.

Not applicable.

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.

Please refer to the response to Q49.

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.

It is considered to be a matter for an issuer and individual directors to agree.

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.

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.

We have no strong view either way. Whilst there is a good reason for a physical board meeting to be held as this enables a face to face exchange of views among directors, on matter which involves a substantial shareholder or a director who has a conflict of interest and that the board has determined to be material, it is nevertheless also important to bear in mind that decision is thus made by a majority of votes among directors, as compared to a circular board resolution which usually requires an agreement by all directors.

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.

Agree. This is the right way forward.

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.

Agree. This is in line with the response to Q55

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.

Disagree. One of the purposes of appointing an alternate director is to discharge the obligations of the director (who appointed that alternate director) when required and so far as it is permissible by law, and attendance of board meetings is one of them. Given that alternate director is subject to the same obligation in terms of say, submission of a Form B to HKSE on appointment, it is difficult to appreciate that his attendance cannot be regarded as if it is the director's attendance.

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.

No, for the reason stated in the response to Q57.

- 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.

It is considered sensible to keep the current exemption that allows issuers' articles to state that a director may vote on a board resolution for a proposed transaction with a company in which he is beneficially interested in no more than 5% of that company's issued shares or voting rights.

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.

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.

No strong view either way as the existing CP A2.3 has served the proposed purpose.

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.

No strong view to this proposal.

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.

It is believed that establishment of good corporate governance practices and procedures is a matter for the entire 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.

No strong view to this proposal.

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.

It is believed that the RBP already provides the platform for separate meetings to be held by chairman with only INEDs and NEDs at least once a year.

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.

No strong view to this proposal.

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.

No strong view to this proposal.

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.

Agree, for the purpose of clarity (although it is quite commonly understood that the intention of the Rule is to include retirement and removal cases).

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.

No strong view to this proposal.

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.

No strong view to this proposal.

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.

No strong view to this proposal.

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.

Agree. This enables shareholders to obtain updated information relating to directors.

However, it is necessary to specify that the update is required to be provided within a reasonable period after such change takes place.

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.

Disagree. On the assumption that Stock Exchange will implement according to Q72, a balance has to be struck between convenience to shareholders and not to overburden issuers (by requiring to upload the same information on the HKEx Website).

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.

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.

The reasons provided in para 243 of the Consultation Paper are sound.

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.

A reasonable suggestion.

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.

Disagree. It is expected that most large corporations already have different coverage about this in their annual report. Small companies may need the flexibility of not giving advance statement whilst considering different directions for growth or survival.

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.

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.

Agree to only add the word 'adequate'.

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.

The change is to make the intention of the CP clearer.

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.

Agree, so long as the change will enable chairman to have the discretion of deciding whether procedural and administrative matters are to be dealt with by poll or by a show of hands.

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.

Those set out in para 275 are sensible examples.

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.

Agree for the purpose of 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.

The proposed flexibility is practical.

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.

Agree since like all other HK incorporated companies, our Company is required to follow the relevant requirements under the Companies Ordinance.

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.

Please refer to the response to Q85.

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.

Please refer to the response to Q85.

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.

Disagree to upgrade to a CP (since CP E1.2 already requires chairman of the board of an issuer and all chairmen of audit, remuneration and nomination committees should attend general meetings).

If the decision of Stock Exchange is to upgrade the RBP to become a CP, it is suggested to also state that attendance by an alternate director of NEDs will meet the requirement.

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.

NEDs of an issuer are expected to give benefit of his expertise and skills, and through the leadership of chairman at board meetings, to the issuer. Hence, it may not be necessary to confine their contributions to the development of the issuer's strategy and policies.

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.

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.

Disagree as it is expected that issuers, particularly large corporations have a number of other committees. The gist is to have chairmen of the key board committees to attend annual general meetings for answering questions that shareholders may have relating to those committees. The current CP already meets that purpose.

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.

Agree (particularly from the perspective of shareholders of small companies).

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.

It is considered appropriate to keep the current arrangement as it is.

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.

It should be a decision of issuers according to their business needs etc. Annual general meetings and circulars to shareholders as required under the relevant laws and rules, are the tools for issuers to communicate with 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.

M&A is available via the Companies Registry. Please define 'constitutional documents'. In any event and as mentioned before, a balance has to be struck between enhancing shareholders' accessibility of information and not to overburden issuers.

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.

Disagree on the basis that Para 327 of the Consultation Paper said it does not appear to be a similar requirement in the jurisdictions that Stock Exchange examined.

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.

Disagree as any change in the issuer's articles of association has to have approval of shareholders at a general meeting. There is therefore no need to make additional disclosure as proposed.

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.

Disagree to Para 344. Stock Exchange should consider both (1) the academic or professional qualifications and (2) relevant experience, rather than also (1) or (2). In order to meet the Objective, it is necessary to tighten up at the entry point.

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.

It is suggested to specify that "membership of the HKICS" refers to either an associate or a fellow member.

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.

This is in view of the general growing concern over the quality of young locally qualified secretaries. It may not be the appropriate time to expand the criteria as suggested in para 346 of the Consultation Paper.

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.

Agree so long as they meet both the requirements set out in the response to Q98.

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 specific view to the proposal.

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.

Agree as this is already a requirement by the Hong Kong Institute of Chartered Secretaries.

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.

No strong view to the proposal.

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.

Agree in principle.

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.

Agree to the first part of the question. Please refer to the responses below in respect of page 27 of Appendix II.

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.

It is preferably (and therefore not a must) for the company secretary to be an employee of the issuer. However, it is a must for the company secretary to have good knowledge of the issuer's principal day to day affairs, for proper discharge of his duties.

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.

No special view on this proposal.

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.

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.

Please refer to the response to Q54.

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.

Agree. In practice and depending on nature of subject, it is also common for company secretary to report to other directors. The formal reporting line to CEO or chairman is acceptable.

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.

No strong view to this proposal.

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.

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.

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 strong view to this proposal.

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 strong view to this proposal.

- End -