



新鴻基地產發展有限公司

Sun Hung Kai Properties Limited

11 March 2011

BY FAX 2524 0149 & BY HAND

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

Dear Sirs,

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

1. In response to the Consultation Paper, we would like to provide the following response.

Major concern - number of Independent Non-Executive Directors ("INEDs")

2. Our major concern relates to the proposals in **Questions 17 and 18** of the Consultation Paper which issuers will need to comply by 31 December 2012.

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)?

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 (i.e., by 31 December 2012)?

3. We do not agree with this proposal for the following reasons:-
 - (a) Appointing INEDs representing at least one-third of the board is currently only a recommended best practice (which is for guidance only). To elevate this to a mandatory Rule requirement (the non-compliance of which will constitute a breach of the Listing Rules) will work harshly on issuers as this will:-
 - (i) add to the costs of the issuers (especially the small issuers); and

Page1



新鴻基地產發展有限公司
Sun Hung Kai Properties Limited

- (ii) impose an unreasonable compliance burden and costs on issuers, even for large ones, some of which may already have sizeable boards with a significant number of executive directors (“EDs”) and non-executive directors (“NEDs”), as they will be forced to substantially increase the number of INEDs to fulfill this requirement. This will result in too large a board which would be inefficient and unwieldy. By way of example, in the case of our company, Sun Hung Kai Properties Limited, we currently have a board of 18 directors, with 7 EDs, 7 NEDs and 4 INEDs. If this proposal is to be implemented, we will need to appoint 3 additional INEDs by 31 December 2012 and increase the membership of our board to 21, even though we have only 7 EDs.
- (b) This proposal seems to presuppose that it is necessary for the ratio of INED to be increased to one-third to ensure proper checks and balances between EDs and NEDs on the one hand, and INEDs on the other, or that this ratio will somehow improve the corporate governance of issuers. We do not consider that this is the case, at least in so far as the vast majority of the issuers are concerned. We agree that issuers should have a strong independent element on their boards, but corporate governance will not necessarily be improved by having more INEDs, especially if issuers were to be forced to appoint additional INEDs, who may not as competent or suitable as they ought to be, in order to comply with this requirement.
- (c) Many issuers are already very large corporations, even by world standard, and their scope of business is growing. There is often the need, for proper corporate governance, to include more EDs, NEDs and senior executives having first-hand knowledge of the business as members of their boards. If this proposal is implemented issuers may be inhibited from appointing new EDs / NEDs, or promoting their senior staff of sufficient competence and calibre to their boards, as an increase in the number of EDs / NEDs will trigger the need to appoint more INEDs in order to comply with this proposal.
- (d) In order to properly discharge his or her duty, an INED must be prepared to commit sufficient time to the appointment. The pool of competent INEDs in the market is already scarce, and an issuer would naturally have reservations on appointing as INEDs persons who are already sitting on the boards of other companies which are engaged in the same industry as the issuer itself and therefore competitors. All these render the tasks for issuers to appoint the right persons as additional INEDs even more difficult. In addition, the implementation of the other proposals contained in the Consultation Paper (including, for example, imposition of the time commitment requirement, the



compulsory training requirement, and the requirement for directors to limit his other professional commitments) may further reduce the pool of potential INED candidates from which issuers can choose.

4. A modified proposal which would achieve the aim of having greater involvement by INED whilst at the same time address our concerns is as follows:-

<u>Size of board</u>	<u>Minimum number of INEDs</u>
up to 12	one-third
13 - 18	4
19 - 27	5
28 or more	6

5. In our respectful submission, this modified proposal strikes a right balance between (i) the need for greater involvement of INEDs and (ii) the need to maintain an appropriate ratio in the number of EDs / NEDs / INEDs, having regard to (a) the limited pool of potential INED candidates, (b) the need to include more EDs and NEDs as the scope of businesses of issuers expands and (c) the optimal number of directors that boards should have to avoid too large and unwieldy boards.
6. The Stock Exchange may wish to review the rules governing INEDs and consider whether, in the light of this proposal which requires a substantial increase in the number of INEDs, the very restrictive criteria for assessing "independence" in Rule 3.13 ought to be suitably modified.

Duty of nomination committee to review time commitment of directors

7. **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?**
8. We do not agree with this proposal on the following grounds:-
- (a) Issuers will have practical difficulties in complying with this proposal, if implemented. NEDs and INEDs are not supposed to work full time for issuers. Evaluation of the time required by each director is subjective and difficult (if not impossible) to assess. Given that: (i) the capability of each director is different, (ii) one NED / INED may act as a member of one committee while another may act as chairman / member of two or three committees; (iii) the workload of each committee varies and hence the time required varies; and (iv)



business activities depend on economic conditions and opportunities that come up in the market, it would not be possible to foresee with any reasonable degree of accuracy the time requirement of each director. If only a rough estimation is required, this will be meaningless.

- (b) Individual directors will also have difficulties in estimating their time requirement. In particular, given the fast changing global and regional market conditions, it will be difficult (if not impossible) to foresee how much time they will need to spend on attending both routine and non-routine business matters of issuers.
- (c) This proposal may also have an impact on the morale of NEDs and INEDs, as it seems to suggest that they are not doing enough for the issuers, even though it was the issuers which invited them to sit on their boards in the first place.
- (d) Emphasis should be placed on quality, not quantity.
- (e) There is also the question as to who is to assess the time requirement of those directors who are also members of the nomination committee.

NED's letter of appointment to set out expected time commitment

- 9. **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?**
- 10. We do not agree with this proposal on the following grounds:-
 - (a) Currently, there is no legal requirement for issuers to enter into written letters of appointment with NEDs and INEDs. Issuers should be allowed to decide for themselves whether a written letter of appointment is required.
 - (b) It is difficult (if not impossible) to assess the expected time commitment of the NEDs / INEDs (please see our comments on Question 4).
 - (c) This proposal, if implemented, will impose unnecessary compliance burden on issuers.



8 hours of minimum training for directors

11. **Question 15 – Do you agree that the minimum number of hours of directors training should be eight?**
12. We do not agree with this proposal on the following grounds:-
- (a) Directors of issuers are already subject to a wide range of statutory and common law duties as well as regulatory obligations. Consequences for non-compliance are serious, and for this very reason every director has (or should have) a vested interest to take steps (such as engaging legal advisors and receiving training) to ensure that he or she complies with the relevant rules and regulations. Imposing an 8-hour training obligation is far too rigid and categorical and lacks flexibility. Such a prescriptive or "check the box" approach may also be counter-productive.
 - (b) Some NEDs or INEDs are experienced legal or accounting professionals, or senior executives of multinational companies or banks, with extensive knowledge and sufficient experience as listed company directors, and well versed in legal, regulatory and corporate governance matters, the imposition of rigid mandatory training obligations would be inappropriate.
 - (c) This proposal, if implemented, will impose additional compliance burden and costs on issuers and directors.
 - (d) There is also the question as to who is to evaluate whether the "training" provided to the directors is acceptable or sufficient for the purpose of complying with this proposal. Further details should be provided by the regulators in case this proposal is to be taken further.

Corporate Governance Committee

13. **Question 39 – Do you agree with the proposed terms of reference listed in paragraph 141 of the Consultation Paper?**

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?



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?

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

Question 43 – Do you agree the duties of an existing committee or committees can be expanded to include those of a corporate governance committee?

Question 44 – Do you agree with the addition of CP D.3.2 stating that the committee performing the proposed duties listed in paragraph 141 of the Consultation Paper should comprise a majority of INEDs?

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?

14. We do not agree with this proposal on the following grounds:-
- (a) The current requirements (i.e. adopting the Code on Corporate Governance Practices and publishing Corporate Governance Reports, which are usually approved by the full board) already provide a sufficient framework on corporate governance matters.
 - (b) To lower the approval level from the full board level to the board committee level will not improve corporate governance.
 - (c) This proposal, if implemented and applied to the audit committee, will overload the audit committee, which is already heavily burdened with extensive responsibilities under the Listing Rules. This may also have a deterring effect on potential candidates in accepting appointments as INEDs.

Monthly updates of performance and financial position

15. **Question 74 – Do you agree that 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?**
16. We do not agree with this proposal on the following grounds:-



新鴻基地產發展有限公司
Sun Hung Kai Properties Limited

- (a) At present, updates are already provided to the board for approving interim results and final results, and for quarterly board meetings.
- (b) The board of directors is in the best position to decide how frequent updates should be provided to them (as mentioned under paragraph 12.(a) above, directorship carries a wide range of statutory / common law / fiduciary / regulatory duties and obligations, including duty to exercise skill, care and diligence in attending the affairs of the issuers).
- (c) Making provision of monthly updates mandatory will lack flexibility, and will impose additional compliance burden on both the small issuers and the large ones with diversified business operations and investment worldwide.

Yours sincerely,
For and on behalf of
Sun Hung Kai Properties Limited