

The Link Management Limited 領匯管理有限公司

Your Ref.:

Our Ref. (Please quote this reference in all correspondence): (LG)/C/76/DQ\_ConultP/RC

10 March 2011

The Corporate Communications Department  
**HONG KONG EXCHANGES AND CLEARING LIMITED**  
12<sup>th</sup> Floor, One International Finance Center  
1 Harbour view Street  
Hong Kong

By Hand

Dear Sirs,

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

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I attach The Link REIT's submission in response to the Consultation.

The Link Reit is pleased to see the various initiatives by the Stock Exchange. Generally, we thought they are in the right direction. Corporate governance enhancements keep Hong Kong abreast of the World's leading financial centers and strengthen our competitiveness with them. The Link Reit is among the leading Hong Kong issuers who practice good corporate governance. We have early-adopted many of the practices proposed in the Consultation Paper, and the Chairman of our Board and the chairman of our committees are all independent non-executive directors. As testament to our high corporate governance standards, in 2010,

- The Link Reit received The Hong Kong Corporate Governance Excellence Awards by The Chamber of Hong Kong Listed Companies, and
- The Link's Board of Directors was named "Directors of the Year 2010" by The Hong Kong Institute of Directors.

We hope our comments are of assistance to the Stock Exchange in its efforts to enhance the corporate governance standards of the Hong Kong equity capital market.

Yours faithfully,



**Ricky Chan**  
Director (Legal) & Company Secretary  
**THE LINK MANAGEMENT LIMITED**  
(In its capacity as manager of The Link REIT)

RC/hw

Encl/

## 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.

Plain writing makes the Rules user-friendly and promotes better understanding of the letters and the intent of the Rules among laymen readers.

### 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

X No

Please give reasons for your views.

The new paragraph does not seem to have added anything in addition to what has already been there under Rule 3.08(f). If a director does not pay attention to the business of the issuer beyond attending formal directors meeting, he can hardly claim himself to have applied "*care and diligence*". Also, similar wordings already appear in the Note to Code Provision (CP) A5. If Hong Kong is codifying director's duties, the reason for a change to Rule 3.08 in the way as proposed is less compelling.

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 (with suggestion)

~~No~~

Please give reasons for your views.

These 2 publications represent the expectations of the respective institutions. Which standard a director is supposed to live up to if the expectation differs? This problem aggravates if, in the course of time, the standards in the respective publications evolve at different pace or in different direction. It is submitted that the existing Rule 3.08 has already been succinct in spelling out the essence of directors' duties, which has for long been well understood by issuers and their advisors.

A better place for them, it is suggested, is CP A5.1 which can require that those publications to become a part of the induction materials for newly appointed directors and as briefing materials to existing directors.

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 (with suggestion)

~~No~~

Please give reasons for your views.

We agree with the suggestion to upgrade RBP 4.4 through 4.6.

As to the suggested A5.2 (e) & (f), it seems that an important role for the Nomination Committee (**NC**) is to assess qualitatively, rather than quantitatively, directors' performance. We agree with the observations in paragraph 43 of the 2010 Consultation Paper. Many small-to-medium size issuers are yet to have NC as part of their corporate governance structure. It would be better for these issuers to first have time to familiarize themselves with operating NC as part of their corporate governance structure. After practising for one or two years, we can then consider whether they should be made CPs. We suggest leaving the suggested A5.2 (e) & (f) as RBPs.

It does not appear to us to have any meaningful use to include any time (number of hours) requirement. Confirmation from directors that sufficient attention has been provided to the business of the issuer suffices.

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 (with suggestion)

~~No~~

Please give reasons for your views.

We stress the NC's role is to assess directors' performance qualitatively; not quantitatively. The amount of efforts and time that requires of a NED varies from business to business and with the NED's experience. A NED who has industry background may not have to spend that much time as one who came from different background. That should not render the former less diligent than the latter, as counting the hours of attendance may tend to give rise to such a misconception. Also, other forms of participation such as site visits to understand the issuer's operations, ad hoc advice/assistance, or critical suggestions to management should be as valuable as mere attendance at Board meeting.

Instead of having rigidly A5.2 (e) & (f) as CPs, it seems that a note after A5.2 (d) may be more appropriate. The note, we suggest, can be along this line "*non-attendance by an NED of over one-half of the Board meeting/committee meeting during the year under review should be a factor for NC to take into account when considering his re-appointment*", and the NC shall be required to state reason if it decides to recommend the re-appointment of a NED who fails the attendance expectation.

When market accumulates enough experience with how NC operates, especially with small-to-medium issuers, we can then assess what the appropriate way forward is.

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.

We agree in principle to the suggestion. We also stress that the NC assessment should not be based upon mechanically comparing the number of hours in attending Board meeting among NEDs. Critical review and constructive suggestions by NEDs are more valuable than mere attendance or rubber-stamping matters at Board meetings.

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 (with suggestion)

Please give reasons for your views.

We agree with the observations in paragraph 39 of the 2010 Consultation Paper.

Having professionals on the board – as NEDs – brings knowledge as well as checks and balance to the issuers. Undue restriction on NED's other professional commitments may deter candidates from joining the Board which in turn shrinks the pool of available NEDs/INEDs. Expanding CP A6.3 in the way suggested may be counter-productive. Also, there is the difficulty in defining what kind of professional commitments a NED is not to take up and in setting limits on the number of permissible professional commitments. From the reverse angle to test the argument, does it necessarily mean a NED devotes sufficient time to the business of the issuer because he has limited the number of his professional commitments?

For executive director, we agree that there should be restriction on professional commitments. The engagement of executive director is on full-time basis. Any outside commitments should only be honorarium nature which does not distract his attention to the day-to-day management of the business of the issuer.

We agree, however, with the suggestion to require a director to acknowledge to the NC that he will have sufficient time to meet his duties.

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.

For the same reason as answered in question 7 above.

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

x No

Please give reasons for your views.

NEDs are not selling time. The value of NEDs is to add check-and-balance to the Board. They are not engaged to provide consultant/employee type of services. It is wrong in principle to judge an NED by the number of hours he is prepared to commit. There is also the practical difficulty for issuer to ask NED to agree time commitment in advance of a year, especially for NEDs busy with public duties or those who travel frequently.

Pushing to the extreme, it can give rise to a situation when the able/competent veterans shy away because of the perceived difficulty in agreeing/committing time in advance; whereas the less savoury will be marketing time slots to issuers who scramble to sign up NEDs to fulfil CP requirements. This does not promote the development of good corporate governance practices.

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

x No

Please give reasons for your views.

Such disclosure serves the purpose of director's evaluation and in some cases, may forewarn any conflict of interest. On the other hand, the Board may find such disclosure of little use. At worst, it can be embarrassing and may erode the trust and confidence among Board members. Annual confirmation to NC by NEDs of sufficiency of time spent with an issuer and disclosures in the corporate governance report should adequately serve the purpose. Given the pros and cons to this suggestion appear to be evenly-balanced, perhaps it may be more flexible if A5.6 remains a RBP rather than a CP.

Question 11. Do you consider that there should be a limit on the number of INED positions an individual may hold?

Yes

x No (with suggestion)

Please give reasons for your views.

This will restrict the number of NEDs willing to serve on the Board.

We suggest a note directing the NC to take into account, when considering appointing or re-appointing NEDs, the number of other directorship of the candidate, and to state the reason for appointing someone who has a long list of outside directorships and engagements. It should be noted that public duties, voluntary works, etc. take as much time of a NED as directorship does.

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

A double-digit number of directorships will be an alarming figure.

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.

Neither – for the reason already stated in 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)?

Yes

X No (with suggestion)

Please give reasons for your views.



The value of Directors is their ability to bring their expertise and experience to bear on the performance of the issuers. They are to drive the business of the issuers to create value for those who invest money in their firms. For shareholders, this is the key expectation. Directors are guardians of assets of the company. In discharge of this function, they are entitled to rely on support internally or from external professional firms with respect to compliance matters.

For seasoned issuers, we believe their board members are conversant with compliance and regulatory requirements. We see no discernable lack of knowledge or compliance awareness among them. For IPO candidates and newly listed issuers, it may take a while for their directors to get used to the cross-over from privately-run business to the regulated environment of a public company. The compliance awareness among these debutants initially may not high enough.

We suggest that the **CPD requirements are not necessary for directors of issuers who have a history of, say, 5-years since listing**, provided that **during such period**, it has **no compliance blemish** with any regulatory or law enforcement agency. This exemption can stay for as long as the issuer remains compliance un-blemished. If during any subsequent year, the issuer is adjudged to have compliance breach, CPD requirement will be revived for all its directors for at least one full audit cycle.

We do see risk with newly listed issuers. To strengthen compliance awareness, we suggest **CPD requirements** be mandated for directors of all **issuers with less than 5-years history since IPO**. This will serve as a continuation of the Fixed Period under Rule 3A.19 with substitution of compliance advisor by the CPD requirement. The post-IPO coaching will give confidence to the IPO process, but will not burden issuers with cost for an unnecessarily long time once they graduate with a clean bill of health 5 years after listing. However, for NEDs CPD requirement should be expanded to go beyond seminars training to include, speech delivery at conference, articles writing, internal briefings and internal seminars by legal/cosec department of the issuers, etc.

Question 15. Do you agree that the minimum number of hours of directors training should be eight?

Yes (with suggestion)

No

Please give reasons for your views.

For issuers who have run into problem with compliance in any financial year, we suggest the number of hours should be raised to 15. Also, in order to have effect, there must be consequence for failing to attend CPD course. We suggest directors CPD attendance be reported in their corporate governance report and non-attendance be explained.

Continuous failure for 3 years, without reasons as acceptable to the Board, should be made a disclosable matter under Rule 13.51. Continual failure over 3 *consecutive* years, without reasons, should be elevated to the level as equivalent to a breach of Listing Rules with disciplinary consequence.

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.

We agree with the observations in paragraph 66 of the 2010 consultation Paper.  
Please also refer to our answer to question 14.

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.

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 agree to the suggested grace period of up to the end of 2012. This will avoid issuers having to scramble to sign up INEDs in short period.

However, a director cannot be "independent" if his appointment depends on the votes of the controlling shareholder. As rightly observed in paragraph 72 of the 2010 Consultation Paper, a phenomenon among Hong Kong (especially family-controlled) issuers is that usually individuals who they consider friendly to them or business allies are appointed to the Board as INEDs. The interest of friends and allies does not align with the public (minority) shareholders, who can hardly rely on them to protect their rights. Best corporate governance only comes when INEDs are appointed by **independent votes**.

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 the observations in paragraphs 75 and 76 of the 2010 consultation Paper, and that the proposal represents a fair and sensible compromise between the 2 views. Independence should not only be done but seen to be done. A continuous service as INED over 9 years gives rise to doubt as to how independent s/he is. We have 2 further suggestions:

1. The CP should clarify that **broken-up periods count**, such that once the length of service of an INED adds up to 9 years, this requirement of shareholders approval applies.
2. The approval shall be given by **independent votes** (with controlling or top-3 substantial, shareholders all abstaining).

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.

We suggest that those reasons should be given by the NC.

### 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.

Elevating it to Rule status brings deterrence. Deviation from CPs carries no real consequence as long as the issuer can concoct a reason for the deviation.

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.

More independence. The rationale in paragraph 95 of the 2010 Consultation Paper is convincing.

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.

Agree.

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

x No

Please give reasons for your views.

Such information has no value to shareholders. Too much information can confuse the market. Failure to meet (new) Rule 3.25 & 3.26 should be disclosed in the Corporate Governance Report and the interim report.

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

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 (with suggestion)

No

Please give reasons for your views.

We suggest the criteria of independence should exclude HR consultants who have been involved in the senior management recruitment process of the issuer in the past 12 months. HR consultants earn commission from the salary of the business executives/directors they place. The higher the salary, the bigger is their commission. Such incentive may compromise their independent status if they are engaged to give advice on what is the market or appropriate level of remuneration for directors.

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

x  No

Please give reasons for your views.

We see no benefit of introducing Model B. We suggest there should only be one way, which is Model A. We agree with the observations in paragraphs 102 & 103. Directors' remuneration should be reviewed and determined by an independent body (the RC). If directors perform, there is no reason why the INEDs of the RC will reject the remuneration proposals. Model B discourages INEDs from forming views, since there is another body (i.e. the Board) to make decision any way.

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.

See answer to question 27.

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.

Consistency – agreed.

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 agree with the observations in paragraph 123 of the 2010 Consultation Paper.

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.

The chairmanship status carries with it influence over the other Board members. Requiring this post to be filled by INED is in line with the requirement in other jurisdictions.

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 (with suggestion)

No

Please give reasons for your views.

Except the suggested A5.2 (e) & (f) – for the reasons given in answer to question 4 & 5 above.

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.

Annual review represents good practice.

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.

This is the key role a well-functioning NC is supposed to perform.

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.

This is just a logical corollary of the requirement mandating the setting up of NC.



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 (with suggestion)

No

Please give reasons for your views.

It is true that, these days, the website of HKEx has been commonly used as a platform for public investors to search for information of listed issuers. Also, making NC's terms of reference available online facilitates quick reference by overseas investors.

However, for investors, the terms of reference of NC are more of reference value than critical as financial data or transaction details. As long as its NC terms of reference are searchable online at the issuer's own website, there is no compelling need for them to be posted again on the HKEx website. In the case of administrative error or oversight resulting in the information on the 2 websites not being synchronized, investors may be misled.

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.

Giving NC sufficient support is necessary for it to function in the way it ought to be, mindful of the fact that NC is being charged with the duty of shaping the profile of the highest governing body of the issuer.

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.

Same reason as our answer to question 37. Also please see our answer to question 26 on the criteria of independence.

C. Corporate Governance Committee

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

Yes

x No

Please give reasons and alternative suggestions.

We agree with the observations in paragraphs 138, 139 & 140 of the 2010 Consultation Paper. This is true especially for small-to-medium size, or newly listed, issuers, many of whom are yet to even have NC as part of their corporate governance structure. The US regime is set against a corporate backdrop different in many respects from the British-based systems on which Hong Kong models. We tend to think that **corporate governance** should be put **under the stewardship of the Board Chairman**, who is to be **assisted by the audit committee (AC) and the company secretary** on corporate governance issues. Steering good corporate governance is a key role of the Chairman (as leader of the Board) who stands to explain to shareholders on such matter.

Another advantage is that the Board Chairman has sufficient standing among his fellow Board members and with senior management to give direction and stamp his authority on the implementation of corporate governance strategy. AC and company secretary has the requisite knowledge and expertise to assist the Chairman on technical matters.

Question 40. Do you consider that the committee(s) performing the proposed duties listed in paragraph 141 of the Consultation Paper should submit to the board a written report on its work annually?

Yes

No

Please give reasons for your views.

See our answer to question 39.

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.

See our answer to question 39. What is the added value of a corporate governance committee report side by side with the Corporate Governance Report? If they are just replicating most of the contents of each other, there is no added value, nor any benefit, for shareholders.

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.

See our answer to question 39.

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.

Yes – by the AC assisting the Board chairman (See our answer to question 39).

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.

AC membership is already INED-majority.

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

x No

Please give reasons for your views.

Not necessary – if the model we suggested in answer to question 39 is in place. The executive director needs not be a member but can sit in for meeting.

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 (with suggestion)

No

Please give reasons for your views.

We agree that some kind of whistle blowing policy should be established. In implementing such a policy, the AC should not be burdened with employee grievances and tip-offs which may be unsubstantiated or are driven by ulterior motive. Only concerns that are **substantiated** by internal audit (**IA**) or risk management (**RM**) function should go to the AC. Concerns rejected by IA/RM as unfounded should not go to AC.

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.

AC should also discuss with external auditors on matters like implementation of audit strategy plan.

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.

On the basis as we answered question 46.

#### 4. Remuneration of Directors, CEO and Senior Management

Question 49. Do you agree with our proposal that issuers should disclose senior management remuneration by band (Appendix 16, new paragraph 25A)?

Yes

No

Please give reasons for your views.

We see no particular down-side to such disclosure.

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.

Same as answer to question 49.

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.

Shareholders should be able to evaluate whether the amount of remuneration paid to the CEO commensurate with his performance, especially when the CEO does not take directorship at the issuer.

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~~

x No (with suggestion)

Please give reasons for your views.

It should not be right for an executive director to receive substantial remuneration when the performance of the issuer, under him, is appalling. On the other hand, performance-based package – if set in wrong proportion – promotes short-termism and, at worst, an Enron-style books cooking for executive directors to collect big bonus. It is suggested that the bonus part of the remuneration should be performance-linked. A decent level of fixed salary is necessary for issuers to attract capable and responsible executive who is being charged with hefty duties. It seems to us that the remuneration of an executive director, who is merely an employee of the company, should be a matter between the parties and should not be part of the CP

## 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.

Suggest once a year by Chairman meeting each director personally.

## 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 (with suggestion)

No

Please give reasons for your views.

For routine continuing connected transactions (**CCT**), which have already been approved at EGM and are conducted within the cap, they may be conveniently dealt with by paper resolutions. This is on the basis that the routine CCT is certain to be agreed by all directors. To this, there may be added a proviso reserving a right for any director to requisition a Board meeting if he has doubt on, or wants to discuss, the continuing connected transactions circulated to him however routine they may appear to be.

For other type of connected transactions, and transaction in which a substantial shareholder or a director is interested, they should be properly discussed and resolved upon at formal Board meeting.

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.

This facilitates issuer group with multiple boards over different parts of the world. It also helps NEDs who are busy with his other commitments.

## 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 with the observations in paragraphs 193 & 194 of the 2010 Consultation Paper.

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.

Same answer as in question 56.

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.

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.

For the reason as stated in the Consultation Paper.

**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 with the observations in paragraph 213 of the 2010 Consultation Paper.

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 see little difference in adding the two adjectives.

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 objection.

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.

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.

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.

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.

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.

## 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 (with suggestion)

Please give reasons for your views.

Retirement – NO.  
Removal – YES.

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.

Such information about the CEO is key information. There is no reason for withholding such information from shareholders when the CEO does not take directorship. We view this glaring omission from the existing Rule 13.51(2) as a major loop-hole.

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.

These are misdemeanors going into honesty and integrity of directors. There is no reason that such information is being withheld from shareholders.

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 rationale as stated under paragraph 229 of the 2010 Consultation Paper.

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

x No

Please give reasons for your views.

All material information of directors is already required in AGM circular, announcement (re changes), or in annual report. These materials are published online. What other or additional info – meaningful and of use to shareholders – is still required of director to publish, we can't think of any.

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

x No

Please give reasons for your views.

Director's info has already been published (online) in corporate materials (such as annual report, AGM circular on appointment/re-appointment, announcement re changes, etc.) posted on issuer's website, which is accessible at all times by the public. There is no compelling need to require issuers to do another online filing on the HKEx website. Please also reference our answer to question 36

## 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

x No (with suggestion)

Please give reasons for your views.

Monthly updates will be too frequent. Normally, performance and financial position should not change too much in between months. We suggest **quarterly** updates.

**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 with the observation under paragraph 243 of the 2010 Consultation Paper.

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.

**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.

Corporate goal, business strategy/business model are commonly found in the Chairman Statement and in the MD & A section of the annual report of the issuer. Corporate goal varies from issuer to issuer and for some, can change over time. The suggested CP C.1.4 does not appear to have added anything of use to shareholders.

**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.

We agree with the observation under paragraph 254 of the 2010 Consultation Paper.

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.

Same reason as in answer to question 78.

## **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 with the observation under paragraph 257 of the 2010 Consultation Paper.

#### **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 with the observation under paragraph 268 of the 2010 Consultation Paper.

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.

We suggest the list of examples mentioned in paragraph 275 of the 2010 Consultation Paper be set out as a note to Rule 13.39(4). We also agree with having FAQ as suggested by paragraph 276 of the 2010 Consultation Paper.

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.

We agree with the observations under paragraphs 277 and 278 of the 2010 Consultation Paper.

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 with the observation under paragraph 273 of the 2010 Consultation Paper.

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 with the observations under paragraphs 286 and 287 of the 2010 Consultation Paper.

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 (with suggestion)

No

Please give reasons for your views.

We suggest a carve-out to the new Rule 13.88 to cater for emergency situations, such as the sudden collapse of the auditor's organization or the audit firm's own re-structuring. We recall examples like Arthur Anderson's sudden demise in the wake of the Enron scandal, or more recently the Grand Thornton situation. In those instances, Rule 13.88 should have enough flexibility, such as by way of a **waiver** from SEHK, for issuers to change auditors without having the need to convene EGM or being stuck with the predicament until the next AGM.

If the existing auditor merges with, or is taken over by, another auditor firm, the issuers should be given the freedom to decide whether they will want to go along with the new auditor firm, whose audit/reporting philosophy or fees structure may be different from the previous auditor and may not be comfortable to the issuer.

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.

This is clear shareholders protection.

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 (with suggestion)

Please give reasons for your views.

It is difficult to schedule Board/Committee meetings to match the diaries of everybody. This difficulty is even more acute with issuer group having multiple boards or overseas boards. It is wrong to equate contribution with time-sheet attendance. An NED can meaningfully contribute to the affairs of the issuers in many other ways, such as passing his comments on for the Chairman or his alternate to relate his views at the Board meeting. His alternate will also report back key points of discussion of the Board meeting to the absentee director who can further ventilate his view by writing (emails) to his fellow Board members. That should not render him less diligent than a NED who just shows up but brings nothing to the Board meeting.  
It should not be a mandatory requirement for NEDs to attend general meetings as it is difficult to schedule a meeting that suit all the directors' itinerary.

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.

Realistically, how likely is it that an issuer, in its annual report, would cite a deviation of this CP to name its NED as not having made positive contribution to the development of the issuer's strategy and policies? There is no substance to this CP [A6.8] if there will only be lip-service compliance.

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.

This is useful information to shareholders when they are being asked to re-elect directors. It is suggested that the circular proposing re-election of directors should also disclose the attendance records of the candidates at past AGMs. What is the point of voting them to the Board if they do not even show up to meet and talk to their voters?

Question 90. 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.

It should suffice for the Board Chairman to arrange for the chairman of the audit, remuneration, and nomination committee to attend AGM.

Many issuers do not have committee other than these 3. Besides, AGM is supposed to deal with the statutory-required business. What value it is to the shareholders for chairman of staff welfare committee, corporate affairs committee, or other working-level committee to come to the AGM? Which other committee is the Chairman to pick to require the personnel to attend AGM? This can be disruptive to big issuer groups which have many different functional committees at various levels across different countries. We suggest that this should only be limited to those committees that are mandatory under the Listing Rules.

#### E. Auditor's Attendance at Annual General Meetings

Question 91. 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 also note the observations in paragraph 304 (a) to (e), to which we agree that they are valid concerns.

The CP may result in auditors having to charge a higher fee due to more time being spent on preparing Q&As at AGM, or more insurance cover being required to cover liability for public statements on Q&As, or that auditors may request external lawyers also to be present. All these add to the unnecessary cost for the issuers, and there can be market confusion if auditor's answer is misreported or statements of the auditor being quoted out of context by media.

## 2. Shareholders' Rights

Question 92. 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

x No

Please give reasons for your views.

Though it may be an enhancement on disclosure and transparency, we do not see any compelling need for such an up-grade.

## 3. Communication with Shareholders

### A. Establishing a Communication Policy

Question 93. Do you agree with our proposed new CP E.1.4 stating that issuers should establish a shareholder communication policy?

Yes

x No

Please give reasons for your views.

The Listing Rules have already had clear Rule-based provisions mandating those matters in paragraph 315 (a) to (c). What is the value of having another CP calling upon issuers to do the same things they are already obliged to do by virtue of the various provisions of the Rules?

### B. Publishing Constitutional Documents on Website

Question 94. 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 do not think there is the need to require issuers to publish updated constitutional documents also on the HKEx website as long as the issuers have one on their own (corporate) website.

C. Publishing Procedures for Election of Directors

Question 95. 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.

D. Disclosing Significant Changes to Constitutional Documents

Question 96. 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.

**PART III: COMPANY SECRETARY**

**1. Company Secretary's Qualifications, Experience and Training**

Question 97. 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 with the observations in paragraph 341 of the 2010 Consultation Paper.

Question 98. 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.

Question 99. 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 with the items suggested in paragraph 346 of the 2010 Consultation Paper.

Question 100. 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.



There is no reason why a foreign citizen, who is qualified and sufficiently experienced with regulatory compliance in British-based regime, should not be allowed to act as the company secretary of the issuer purely because s/he is not a HK resident. Removal such a geographic-biased requirement helps international-based issuers (e.g. Prada/LVMH) when their employers list their business divisions in Hong Kong. Such international-based issuers will be more comfortable if their headquarter-based personnel (such as their group head of legal), who is familiar with their parent country regulatory regime, acts as company secretary of their HK-listed divisions.

However, in such case, those issuers should demonstrate that their (non HK-resident) appointee either possesses the requisite Hong Kong Listing Rules and SFC-practice knowledge, or that s/he is adequately and ably assisted by deputy and officers who possess the requisite qualifications and knowledge as required by Rule 3.28, and that such deputy and officers are internal full-time employees – and not external service providers – of the issuer.

Question 101. 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.

There should be a level-playing field for all issuers, Mainland or elsewhere.

Question 102. 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.

Continue professional development is important. We have no strong view on the number of hours

Question 103. Do you agree with the proposed transitional arrangement on compliance with Rule 3.29 in paragraph 350 of the Consultation Paper?

Yes (with suggestion)

No

Please give reasons for your views.

Suggest (i) a broad-band 5 years before effective date of the new Rule 3.29 (so that those who became company secretary on 2 January 2005 will not miss out) and that (ii) there is a 24-months grace period for the 1<sup>st</sup> category.

## 2. New Section in Code on Company Secretary

Question 104. 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.

Question 105. 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.

We agree with the 5 principles set out in paragraph 352 of the 2010 Consultation Paper.

Question 106. 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.

This CP would put a stem to the practice among some issuers (principally Mainland) of outsourcing the entire company secretary functions to an outside law firm or company secretarial firm, who know little about the business and day-to-day affairs of the issuers and process only paper works. Such practice does not promote good corporate governance practice, and oversight or poor communication with their client issuer can lead to non-compliance.

Question 107. 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.

We repeat the answer we gave on question 106. In addition, the issuer should be required to give reason as to what prevents the issuers from having company secretary functions internally staffed by full-time employees, and explain on its choice of the external service provider. Since the company secretary is supposed to serve the Board and report to the Board Chairman, such explanation should come from the Board and not by management.

Question 108. 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.

Given the important role the company secretary assumes, s/he should not be subjected to pressure from management. To perform the role, s/he should be free of the fear of losing her job whenever s/he has to take on management on compliance or disclosure issue.

Question 109. 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.

Yes – same reason as stated in answer to question 108.

Question 110. 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.

Yes – same reason as stated in answer to question 108.

Question 111. 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.

### CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS

#### 1. Definition of "Announcement" and "Announce"

Question 112. 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 113. 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 (with suggestion)

No

Please give reasons for your views.

We suggest the Exchange also provide the authorized representatives with the mobile number of the relevant team of the Listing Division.

## 3. Merging Corporate Governance Report Requirements into Appendix 14

Question 114. 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.

We agree with the observation of paragraph 378 of the Consultation Paper.

Question 115. 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.

Yes – referencing also our answer to question 1.

- End -