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Your ref

Our ref

Contact

18 March 2011

Dear Sir/Madam,

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

KPMG welcomes the opportunity to comment on the above consultation paper regarding the proposed changes to the Hong Kong Code on Corporate Governance and also the Rules governing the listing of securities published by Hong Kong Exchanges and Clearing Limited in December 2010. Overall, we welcome the direction of the proposals and support the objective of further improving corporate governance practices. Indeed, we consider Hong Kong should be at the forefront of best corporate governance to ensure its leading role as a financial international centre is not just maintained, but developed.

Our answers and comments to the specific consultation questions concerning the proposed changes are detailed in Appendix 1. In addition, we wish to make the following observations:-

Risk Management

We note that the consultation paper does not include proposals to upgrade current Recommended Best Practices C.2.3 ((a) to (e)), C2.4 ((a) to (e)), C.2.5 and C.2.6 to Code Provisions. We would strongly support such a move to improve the disclosure of internal control practices and also risk management systems. Further analysis of ASX Corporate Governance Principle 7 "Recognise and manage risk" highlights the importance of establishing policies for the oversight and management of material business risks, including considering whether an internal audit function is required to review internal control and also the risk management system.

The proposal of a Corporate Governance Committee as a RBP is supported, but we suggest all the proposed duties (described in the terms of reference) of this Committee be included as an RBP rather than as the proposed CP D.3.1.

Non-Executive Directors

We note the intention to strengthen the accountability of directors through greater disclosure of time commitments and changes to other professional commitments. To strengthen accountability further and to align with Code Provision B.1.1 of the UK Code and Recommendation 2.1 of the Australian Code, we suggest consideration be given requiring



Hong Kong Issuers to state the reasons why each INED is considered independent against a list of criteria including for example, whether each director has close family ties with any of the company's advisors, directors or senior employees.

Finally, we note that recommendation 3.2 of the Australian Code promotes diversity objectives and goals, and we suggest consideration be given to include a similar Code Provision in the Hong Kong Code to support ethical and responsible decision making objectives.

If you have any questions relating to these comments or require further information please do not hesitate to contact me.

Yours faithfully,

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Consultation Question	Answer	Comment
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?	No	-
Question 2: Do you agree with our proposed change to Rule 3.08 to clarify the responsibilities the Exchange expects of directors? Please give reasons for your views.	Yes.	However, we are concerned that the requirement to “follow up anything untoward” is too broadly worded for the purposes of a Rule. We suggest re-wording this phrase in Rule 3.08 as follows: “...They must <u>bring to the attention of the Board</u> , anything untoward that comes to their attention.”
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? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	We agree that it is important that such a regular review should be carried out. However, we do not consider that the Nomination Committee is the most appropriate body to carry out such a review and therefore do not support the proposed CP A.5.2(e).	In our view, reviewing whether a director is meeting time requirements to perform his responsibilities should be the responsibility of the Chairman. The time required and the review process should be set-out in the appointment letter of each director. We can foresee verification and objectivity difficulties where the nomination committee is delegated to review on a formal basis whether directors are meeting the time requirements set out in their appointment letters.

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Consultation Question	Answer	Comment
<p>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? Please give reasons for your views.</p>	<p>No. See also comment to Q4.</p>	<p>The requirement to spend sufficient time on an issuer's business should be set-out in appointment letters, and the review of actual time spent by NEDs on an issuer's business should be performed by the Chairman and not necessarily by the nomination committee. This annual confirmation should take place during regular meetings between each director and the chairman.</p>
<p>Question 6: Do you agree to include a disclosure requirement in the Corporate Governance Report (paragraph L (d) (iii) of Appendix 14) that NEDs have made annual confirmation to the nomination committee that they have spent sufficient time on the issuer's business? Please give reasons for your views.</p>	<p>No</p>	<p>It does not seem equitable to single out NEDs under this proposed disclosure requirement. Also, Rule 3.08 already states directors must take an 'active interest in the issuer's affairs' and this should be sufficient to give comfort that NEDs have spent sufficient time on an issuer's business.</p>
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	
<p>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? Please give reasons for your views.</p>	<p>No</p>	<p>We do not believe NEDs should be singled out to make this signed confirmation. Please also refer to the comment under Q.4 and Q.5 concerning the role of the Chairman when reviewing time spent on the issuer's business.</p>

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Consultation Question	Answer	Comment
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 NEDs letter of appointment should set out the expected time commitment? Please give reasons for your views.	Yes	
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? Please give reasons for your views.	Yes	-
Question 11: Do you consider that there should be a limit on the number of INED positions an individual may hold? Please give reasons for your views.	No	The time commitment requirements for a NED are adequately addressed under re-numbered CP A.6.3, and like other jurisdictions, there are too many unknown personal factors involved with limiting the number of INED positions an individual should hold.
Question 12: If your answer to Question 11 is "yes", what should be the maximum number?	N/A	-
Question 13: If your answer to Question 11 is "yes", do you think that the limitation should be a Rule or a CP? Please give reasons for your views.	N/A	-

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Consultation Question	Answer	Comment
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)? Please give reasons for your views.	Yes	
Question 15: Do you agree that the minimum number of hours of directors training should be eight? Please give reasons for your views.	Yes – Please see the comment to Q 16 on what the professional development should entail.	Specifying eight hours as a minimum could be considered too low. However, setting out this requirement re-enforces the notion that Directors should be undertaking some form of training in order to help fulfil their role.
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)?	-	We consider that the word “training” should be defined reasonably broadly to include methods of self-study as well as attending training sessions provided by others. However, for the purposes of meeting the minimum 8 hours requirement we recommend that the concept of “verifiable” is adopted, as is used, for example in the HKICPA’s CPD guidelines (specifically Statement 1.500). “Verifiable” as used in those guidelines, means capable of objective verification by a competent source. The guidelines list out a range of activities which would fall within the concept of verifiable CPD activities, including self-learning modules, participating in discussion forums or reading professional journals.
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)? Please give reasons for your views.	Yes	

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Consultation Question	Answer	Comment
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 above? Please give reasons for your views.	Yes	
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)? Please give reasons for your views.	Yes	
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)? Please give reasons for your views.	Yes	
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)? Please give reasons for your views.	Yes	-

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Consultation Question	Answer	Comment
Question 22: Do you agree with our proposal that the remuneration committee must be chaired by an INED? Please give reasons for your views.	Yes	-
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)? Please give reasons for your views.	Yes	
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? Please give reasons for your views.	No	Rules 3.25 to 3.27 relate to establishing a Remuneration Committee. Since the work of such a Committee involves ad hoc or periodical decisions concerning remuneration packages, rather than continuous monitoring, it seems excessive to make an “immediate announcement” if at any time such a Committee has not been formally constituted. We consider it would be sufficient if the requirement to make an announcement arose only if the issuer has failed to set up a remuneration committee and/or appoint appropriate members within the allowed rectification period i.e. within three months as per the proposed Rule 3.27.
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? Please give reasons for your views.	Yes	

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Consultation Question	Answer	Comment
<p>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)? Please give reasons for your views.</p>	<p>Yes,</p>	
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>
<p>Question 28: 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)? If your answer is “yes”, do you agree that RBP B.1.8 should be revised (see Appendix II) and upgraded to a CP (renumbered CP B.1.6). Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>

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Consultation Question	Answer	Comment
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	<p>We note that to date the establishment of a nomination committee is not the norm and therefore the upgrading of this RBP to CP differs in nature from other upgraded RBP in the proposals. However, we support this proposal on the basis that under the “comply or explain” approach to Code provisions it may become more apparent to the market why many companies do not consider such a committee to be necessary.</p>
<p>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? Please give reasons for your views</p>	<p>Yes</p>	
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	
<p>Question 33: Do you agree that the proposed CP (currently RBP A.4.5 (a)) should state that the nomination committee review of the structure, size and composition of the board should be performed at least once a year? Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>

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Consultation Question	Answer	Comment
<p>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?</p>	<p>We support the text in paragraph 132 which refers to <u>complementing</u> the issuer's corporate strategy but not the text in question 34 and Appendix II which refers to <u>implementing</u> the strategy</p>	<p>We note that the text in paragraph 132 refers to "<u>complementing</u>" the issuer's corporate strategy and not "<u>implementing</u>" it as is used in question 34 and page 8 (A.5.2 (a)) of Appendix II. We support the wording in paragraph 132 and assume that the wording in Appendix II is an oversight.</p>
<p>Question 35: Do you agree that RBP A.4.6 (availability of nomination committee's terms of reference) should be upgraded to a CP? Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>

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Consultation Question	Answer	Comment
<p>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? Please give reasons for your views</p>	<p>Yes</p>	<p>-</p>
<p>Question 39: Do you agree with the proposed terms of reference listed in paragraph 141? Please give reasons and alternative suggestions.</p>	<p>Yes, although consideration should be given to making proposed CP D.3.1, a RBP and not a CP.</p>	<p>The duties described in paragraph 141 (a) to (e), would normally be management's responsibilities and not the responsibility of Board members. Issuers should have an effective risk management framework in place and the risks associated with items a) to e) should be managed by senior management and not by board directors.</p>
<p>Question 40: Do you consider that the committee(s) performing the proposed duties listed in paragraph 141 should submit to the board a written report on its work annually? Please give reasons for your views.</p>	<p>Yes, although consideration should be given to producing the report as a recommended best practice, hence changing CP.3.1 (referred to in paragraph 141) to a RBP.</p>	<p>The duties described in paragraph 141 should be performed by management. Directors are not employees of the company and as such, should not have day to day responsibilities to perform the listed tasks. There is no reason why an annual report cannot be produced covering the results of reviewing the duties listed in paragraph 141, but such a report should come from management and be reviewed by the board, ideally via the audit committee.</p> <p>The level of detail described under paragraph 141 is at a granular level, and a report addressing the results of these duties would usually be submitted by the Head of Internal Audit to the Audit Committee as part of the review on the effectiveness of internal control. The duties described in paragraph 141 are the responsibility of management who are accountable to the board.</p>

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Consultation Question	Answer	Comment
<p>Question 41: Do you consider that this report (as described in paragraph 140) should be published as part of the issuer's corporate governance report? Please give reasons for your views.</p>	<p>Yes, although consideration should be given to allowing issuers the flexibility to publish as a recommended best practice (see answers to Q 39 and 40).</p>	<p>The findings described in the report suggested in paragraph 142 (not paragraph 140) of the consultation document should be received by the audit committee and a summary submitted to the board. This report should not be published as part of the issuer's corporate governance report because of its operational nature. Code Provision C.2.1 requires issuers to perform an annual review of their internal controls systems and disclose in the Corporate Governance report that they have done so. The Corporate Governance report should therefore already reflect the review performed on Corporate Governance activities listed in paragraph 141.</p>
<p>Question 42: Do you agree with introducing RBP D.3.3 stating that an issuer should establish a corporate governance committee? Please give reasons for your views.</p>	<p>Yes</p>	<p>Based on the proposed terms of reference described in paragraph 141 ((a) to (e)) a Corporate Governance Committee may not be necessary to perform the listed tasks. Management may be more appropriately placed to perform the specified duties and not the directors. The results of reviewing the tasks should be reported through the Audit Committee as part of the review of the system of internal control</p>
<p>Question 43: Do you agree the duties of an existing committee or committees can be expanded to include those of a corporate governance committee? Please give reasons for your views.</p>	<p>Yes, but the Audit Committee will be precluded from performing these duties if CP D.3.2 is followed, since the Audit Committee should comprise NEDs under Rule 3.21</p>	<p>Management may be more appropriately placed to perform the specified duties and not the directors.</p>

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Consultation Question	Answer	Comment
<p>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 should comprise a majority of INEDs? Please give reasons for your views.</p>	<p>Yes, although consideration should be given to making CP D.3.2 a recommended best practice rather than a Code Provision</p>	
<p>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? Please give reasons for your views.</p>	<p>Yes, although as mentioned in response to Q43, this will preclude the Audit Committee from performing these duties, since the Audit Committee should comprise NEDs under Rule 3.21</p>	
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	<p>We also suggest the audit committee terms of reference should also be published in the same way as the nomination committee terms of reference in the proposals described under Q.35 and Q.36</p>
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	<p>There are many reasons why the Audit Committee should meet the external auditor more than once a year, including planning the annual audit, meeting on the progress of both the interim and the annual audit, and updating on the results and other auditing matters.</p>
<p>Question 48: Do you agree that a new RBP should be introduced to encourage audit committees to establish a whistle blowing policy? Please give reasons for your views.</p>	<p>Yes</p>	

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Consultation Question	Answer	Comment
Question 49: Do you agree with our proposal that issuers should disclose senior management remuneration by band (Appendix 16, new paragraph 25A)? Please give reasons for your views.	Yes	
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	
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? Please give reasons for your views.	No	Since there is no statutory definition of "CEO", the nature of the role may vary considerably from one entity to another. We consider that where the CEO is not a director of the issuer, it is sufficient for his/her remuneration to be disclosed amongst the remuneration of other senior management on a no-names basis in bands. We do not consider it necessary to otherwise single out individuals with this job title.

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Consultation Question	Answer	Comment
<p>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)? Please give reasons for your views.</p>	<p>No</p>	<p>Determining the level of remuneration should remain the responsibility of the remuneration committee as delegated by the board ('Model A, Model B or other). If a CP is required on this subject, we suggest considering either the UK Combined Code (paragraph 168 in the consultation document) or the Australian Code Principle (Paragraph 169) since these Principles do not indicate how much of the remuneration should be linked to individual or corporate performance. By stating 'significant proportion' in the suggested Code Provision, there is a risk issuers will view decisions reached by remuneration committees as being influenced by the Exchange.</p>
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	<p>Please also refer to comments under Q.4 and Q.5</p>
<p>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 number of directors or a director has a conflict of interest)? Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>

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Consultation Question	Answer	Comment
Question 55: Do you agree with our proposals to add a note to CPA.1.8 (renumbered CP A.1.7) stating that attendance at board meetings can be achieved by telephonic or video conferencing? Please give reasons for your views.	Yes	-
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 above? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	-
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)? Please give reasons for your views.	Yes	-

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Consultation Question	Answer	Comment
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? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	-
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.? Please give reasons for your views.	Yes	Note also that, as mentioned in our response to question 4, we consider that this role should include reviewing the extent to which NEDs are meeting their responsibilities towards the issuer.
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”? Please give reasons for your views.	Yes	-

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Consultation Question	Answer	Comment
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	-
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? Please give reasons for your views.	Yes	-
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	-
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	-
Question 68: Do you agree that we should amend Rule 13.51(2) to require issuer’s to disclose the retirement or removal of a director or supervisor? Please give reasons for your views.	Yes	-

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Consultation Question	Answer	Comment
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)? Please give reasons for your views.	No	For the reasons explained in our response to question 51, we do not support such additional attention being given to non-director CEOs as compared to that given to other non-director members of senior management.
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? Please give reasons for your views.	Yes	-
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)? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	-

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Consultation Question	Answer	Comment
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? Please give reasons for your views.	Yes	We suggest guidance concerning the minimum content of the "monthly updates" be provided to Issuers.
Question 75: Do you agree with the proposed amendment to Rule 3.25A(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	-
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	-
Question 77: Do you agree that we should introduce the proposed CP (CP C.1.4) as described in paragraph 250? Please give reasons for your views.	Yes, although the information relating to the explanation proposed under CP 1.4 should already be addressed in the Chairman, CEO's and/or the Directors narrative contained in the annual report.	

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Consultation Question	Answer	Comment
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)? Please give reasons for your views.	Yes	
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)? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	<p>We note from paragraph 257 of the Consultation paper that the intention of this requirement is to ensure that significant resolutions are not hidden by being bundled. We support this proposal but would recommend that the wording of CP E1.1 should be clarified as follows in order to be consistent with that intent:</p> <p><i>“Issuers should avoid “bundling” <u>significant</u> resolutions unless ...”</i></p>
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 from voting by poll? Please give reasons for your views.	Yes	-

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Consultation Question	Answer	Comment
Question 82: Do you agree with the examples in paragraph 275? Do you have any other examples to add? Please give reasons for your view.	Yes	-
Question 83: Do you agree that our proposed amendments to Rule 13.39(5) clarify disclosure in poll results? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	
Question 85: Do you agree with our proposal to add new Rule 13.88 to require shareholder approval to appoint the issuer's auditor? Please give reasons for your views.	Yes	
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? Please give reasons for your views.	Yes	

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Question	Answer	Comment
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	
<p>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)?</p>	<p>Yes</p>	<p>To avoid misunderstandings, we recommend that that words "of shareholders" is added after "general meetings" in CP A.6.7.</p>
<p>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)? Please give reasons for your views.</p>	<p>Yes</p>	<p>We agree with the proposal in its more narrowly worded form in CP A.6.8. I. e. that the INEDs should make a positive contribution to the development of the issuer's strategy and policies <i>through independent, constructive and informed comments</i>. We consider that these additional qualifying words are important to enable the issuer to make a reasonably objective assessment of whether this CP has been complied with.</p>
<p>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? Please give reasons for your views.</p>	<p>Yes</p>	

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Question	Answer	Comment
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? Please give reasons for your views.	Yes	
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, although the CFO or another member of senior management is better placed to answer questions on the financial statements including those questions on accounting policies.	Answering questions about the accounting policies of an Issuer is the responsibility of management. The result of the audit is published in the annual report. If the auditor is required to answer questions on all the areas described in Q.92, shareholders may believe that the auditor is representing management which is not the case.
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)? Please give reasons for your views.	Yes	
Question 94: Do you agree with our proposed new CP E.1.4 stating that issuers should establish a shareholder communication policy? Please give reasons for your views.	Yes	

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Question	Answer	Comment
<p>Question 95: Do you agree with our proposal to add 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 Web-site? Please give reasons for your views.</p>	<p>Yes if 'constitutional documents' refers to only Memorandum of Association and Articles of Association documents. We believe only these two 'constitutional documents' should be required to be published in the manner described under the proposed rule.</p>	
<p>Question 96: Do you agree with our proposal to add 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? Please give reasons for your views.</p>	<p>Yes.</p>	<p>The Exchange may consider expanding this new Rule such the issuer should also publish the requirements (e.g. experience and qualifications) in order for a person to be proposed as a director.</p>
<p>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)? Please give for your views.</p>	<p>Yes</p>	<p>Diversity of views over what constitutes a 'significant' change could result in issuers effectively being given a choice on which changes need to be disclosed. For the avoidance of doubt, we would recommend changing the term 'significant' to 'all' since it is unlikely that articles of association will change on a regular basis.</p>

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Question	Answer	Comment
<p>Question 98: Do you agree with our proposal to introduce a new Rule 3.28 on requirements for company secretaries' qualifications and experience? Please give reasons for your views.</p>	<p>Yes,</p>	<p>However, new Rule 3.28 suggests that individuals will need to have both the specified professional qualifications <u>and</u> company secretary experience in order to perform the company secretary role. This could prevent many qualified individuals from moving into this profession.</p>
<p>Question 99: Do you agree that the Exchange should consider as acceptable the list of qualifications for company secretaries set out in paragraph 345? Please give reasons for your views.</p>	<p>Yes</p>	<p>However clarity is required on how an individual becomes a member of the HKICS, given that membership of the HKICS may not constitute academic or professional qualification.</p>
<p>Question 100: Do you agree that the Exchange should consider the list of items set out in paragraph 346 when deciding whether a person has the relevant experience to perform company secretary functions? Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>
<p>Question 101: Do you agree with our proposal to remove the requirement for company secretaries to be ordinarily resident in Hong Kong? Please give reasons for your views.</p>	<p>Yes</p>	<p>-</p>

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Question	Answer	Comment
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? Please give reasons for your views.	Yes	-
Question 103: Do you agree with our proposal to add Rule 3.29 requiring company secretaries to attend 15 hours of professional training per financial year? Please give reasons for your views.	Yes	-
Question 104: Do you agree with the proposed transitional arrangement on compliance with Rule 3.29 in paragraph 350? Please give reasons for your views.	No	We do not consider that undertaking 15 hours per annum of relevant continuing professional development activities is onerous and therefore consider that the transitional provisions are overly generous. We would recommend that company secretaries should be required to comply with this requirement at the latest in calendar year 2012.
Question 105: Do you agree with our proposal to include a new section of the Code on company secretary? Please give reasons for your views.	Yes	-
Question 106: Do you agree with the proposed principle as described in paragraph 362 and set out in full in page 27 of Appendix II? Please give reasons for your views.	Yes	-

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Question	Answer	Comment
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? Please give reasons for your views.	Yes	-
Question 108: Do you agree with our proposal described in paragraph 364, that if an issuer employs an external service provider, it should disclose the identity of its issuer contact person? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	-

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Question	Answer	Comment
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? Please give reasons for your views.	Yes	-
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? Please give reasons for your views.	Yes	-
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 contact details prescribed by the Exchange may prescribe from time to time"? Please give reasons for your views.	Yes	
Question 115: Do you agree with our proposal to merge Appendix 23 into Appendix 14 for ease of reference?	Yes	-
Question 116: Do you agree with our proposal to streamline Appendix 23 and to make plain language amendments to it?	Yes	-