

## 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.

*We welcome the attempt of plainer writing and from our review of your proposals, we are not aware of any issues.*

### CHAPTER 2: PROPOSED SUBSTANTIVE AMENDMENTS

#### PART I: DIRECTORS

##### 1. Directors' Duties and Time Commitments

Question 2. Do you agree with our proposed change to Rule 3.08 to clarify the responsibilities the Exchange expects of directors?

Yes

No

Please give reasons for your views.

*We feel that it is one of the fiduciary duties of a director to take an active interest to understand the affairs of any company where they sit on the board. As such, it is sensible to provide clarification around the expectations of the directors.*

Question 3. Do you agree with our proposed addition of the Note to Rule 3.08 referring to the guidance issued by the Companies Registry and HKIOD?

Yes

No

Please give reasons for your views.

***Clear guidelines will help directors, particularly those from overseas to understand Hong Kong's expectation of them.***

Question 4. Do you agree to include a new duty (CP A.5.2(e)) in the nomination committee's written terms of reference that it should regularly review the time required from a director to perform his responsibilities to the issuer, and whether he is meeting that requirement?

Yes

No

Please give reasons for your views.

***We agree because it requires a proper focus on this area.***

Question 5. Do you agree to include a new duty (CP A.5.2(f)) in the nomination committee's written terms of reference that it should review NEDs' annual confirmation that they have spent sufficient time on the issuer's business ?

Yes

No

Please give reasons for your views.

***See response to question 4.***

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 are supportive of such proposal. It is not unreasonable for shareholders to be made aware of any short comings regarding the time spent. Further we feel the nomination committee should also consider whether the directors had ensured "timely attention" to his/her duties.***

Question 7. Do you agree to expanding CP A.5.3(re-numbered CP A.6.3) to state that a director should limit his other professional commitments and acknowledge to the issuer that he will have sufficient time to meet his obligations?

Yes

No

Please give reasons for your views.

***The director should limit not only his/her professional commitments but also his/her private and other commitments (i.e. voluntary services, etc). However, overall we feel it should be up to the directors and the nomination committee to decide on a case by case basis whether a director has sufficient time to meet his/her obligations.***

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.

***We are supportive, this becomes a declaration by the NED and will ensure he/she gives proper consideration to the issue.***

Question 9. Do you agree to upgrading RBP D.1.4 to a CP (re-numbered CP D.1.4) and amending it to state that an NED's letter of appointment should set out the expected time commitment?

Yes

No

Please give reasons for your views.

***Supportive, it is good to clarify the understandings/expectations. However, the nomination committee should review and monitor on an on-going basis since unexpected events can change the requirements on directors' commitments significantly.***

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

No

Please give reasons for your views.

***Supportive, an issuer should be made aware of major changes over a director's ability to spend the required time needed in respect of the issuer's business.***

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

Yes

No

Please give reasons for your views.

*We consider that the number of INED positions an individual may hold should take into account of both the time the INED has available and an expectation of the demands on his/her time from all relevant commitments. The capacity of an INED who is a retired person in taking on more director positions will vary significantly from that of an INED who is a full-time employee of another corporation and has to devote substantial time to meet his/her obligations as a full-time employee. In addition, the size/complexity of the issuer needs also to be taken into account. Therefore it may not be meaningful to impose a limit on the number of INED positions an individual may hold since it may not fit all circumstances and the maximum number of directorships an individual may hold will depend on the level of engagement of the individual in other job commitments.*

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

N/A

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.

N/A

## 2. Directors’ Training and Independent Non-executive Directors

Question 14. Do you agree that we should upgrade RBP A.5.5 (requirement for continuous professional development) to a CP (re-numbered CP A.6.5)?

Yes

No

Please give reasons for your views.

*As there are always a significant amount of new requirements in relation to board’s matters, be it regarding new corporate governance practices, accounting and disclosure changes, legal changes, regulatory changes, etc. It is critical that all directors are kept up-to-date with current better practices.*

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

Yes

No

Please give reasons for your views.

***We recommend that the minimum number of hours be monitored and revisit this issue in 2 years time.***

***We feel, however, the focus should be on the quality and relevance of the type of training rather than just achieving a certain number of hours.***

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.

***The use of internet-based training, self reading, lecturing etc can also be included. We feel directors should keep records of only verifiable and relevant training.***

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.

***In the US and Australia, the practice is to have a majority of INEDs on a board. In the UK, at least half. This proposal is a step in the right direction.***

***However, the key issue is to ensure HK boards have directors who can add value. It is critical that standards are maintained or enhanced in HK as the number of directors are increased as the result of this proposal.***

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.

***It is pragmatic to phase the rule in over a year since it will take time for boards to find suitable candidates. It is in no one interest to force companies to appoint directors who are not going to add value to the board. By providing a transitional period helps reduce this risk.***

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.

***It is reasonable to allow the shareholders to have the opportunity to vote on an INED who has been on the board for 9 years. Such individuals can often bring enormous amounts of experience to the board and provide insightful value. The disclosure of presenting such a case to shareholders along with a view as to whether the director remains independent or not is a transparent and proper thing to do.***

***Further clarification could be given over whether this would then become an annual process for INEDs serving more than 9 years.***

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.

***Shareholders who may not know the INED will obtain a better understanding of what the INEDs are expected to bring to the issuer and can measure those expectations better in future years.***

### 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.

***We support the proposal in regards to the current sensitivity surrounding director remuneration.***

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.

***In order to ensure independence in the decision making process, we support the proposal that the remuneration committee must be chaired by an INED.***

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.

***Supportive***

Question 24. Do you agree with our proposal to add a new Rule (Rule 3.27) requiring an issuer to make an announcement if it fails to meet the requirements of proposed Rules 3.25, 3.26 and 3.27?

Yes

No

Please give reasons for your views.

***It reinforces the importance of transparency by raising the issue of remuneration committees to listing rules status.***

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

***It reinforces the seriousness of the issue.***

Question 26. Do you agree that we should add “independent” to the professional advice made available to a remuneration committee (CP B.1.2, re-numbered CP B.1.1)?

Yes

No

Please give reasons for your views.

***It is important that the committee receives independent advice when needed to make sound and fair judgments and/or decisions.***

Question 27. Do you agree that, in order to accommodate Model B, we should revise CP B.1.3 (re-numbered CP B.1.2) as described in paragraph 117 of the Consultation Paper?

Yes

No

Please give reasons for your views.

***We feel that it is sensible to raise the profile of model B since it is a common mode of process for many businesses based on our experience. In addition, it reinforces our legal system whereby the board has overall responsibility under oversight from others and that they cannot abdicate their responsibilities.***

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.

***We feel that by providing the requirement to disclose any such disagreements, this will achieve higher transparency to the general public and raise the need for the boards and its sub-committee to work towards solutions amiable to both. In addition, with the increased attention on remuneration, we feel it is sensible to upgrade the RBP to a CP. Further, we feel it would be useful to clarify exactly which directors and senior staff should be included in any review by the remuneration committee.***

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.

***We feel that the board’s performance should be based on a company achieving its corporate goals and objectives. This is a much better balanced set of criteria to measure a board’s performance and is more consistent with the new board assessment recommendation made under RBP B1.8 (Paragraph 180).***

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 feel the primary responsibility of the nomination committee is to review the size, structure and composition of the board, review performance (see question 53) and commitment (both required and made available – See question 5 and 6), and identify and recommend appropriate candidates for election or re-election. The objective of this being to ensure the board optimizes its ability to deliver its approved strategy. By raising these proposals from RBP to a CP, in all the areas covered by questions 30 through 38, we feel it will help encourage best practice in this area. We particularly agree to the proposal under question 33 and 34 to amend the terms of reference to ensure the nomination committee reviews the board’s structure and composition at least once a year to optimize the company’s ability to achieve its strategy. Since businesses are more susceptible to market volatility now-a-day (e.g. due to changes in consumer’s taste and technology etc), the company may require additional help from the board. Thus the nomination committee should expect to meet more regularly to assess the impact market changes may have on the competencies the board needs and therefore it can perform “resource needs gap” analysis to address the impact in a timely manner. Finally, the inclusion to enable the committee to seek independent advice is important since decisions related to board composition can become personal and sensitive especially in smaller and/or closely held companies. The INEDs should have the comfort to know that they can reach out for support when deemed necessary. With the growing importance now being proposed in respect of the nomination committee and the reinforcement of the remuneration committees’ role (see question 21), we would recommend that further guidance be included in the code to help directors avoid duplication of work between these two committees.*

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.

*We are supportive of the proposal. There are often sensitive decisions that need to be made by the committee in relation to the needs/competencies of the board. We feel in order to add value, this committee must satisfy itself of the true competencies it needs and whenever possible only appoint directors that truly fit the requirements. However, it may impose some challenges due to the inherent limitation of shareholding structures in Hong Kong. As such, it is essential for the committee to be chaired by an INED who is truly “independent in mind”.*

Question 32. Do you agree that RBP A.4.5 (nomination committee’s terms of reference, re-numbered CP A.5.2) should be upgraded to a CP?

Yes

No

Please give reasons for your views.

*Please refer to comments included in question 30.*

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.

*Please refer to comments included in question 30.*

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.

*Please refer to comments included in question 30.*

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.

*Please refer to comments included in question 30.*

Question 36. Do you agree that the proposed CP (currently RBP A.4.6, re-numbered CP A.5.3) should state that issuers should include their nomination committee's terms of reference on the HKEx website?

Yes

No

Please give reasons for your views.

***This supports the principle of transparency and permits shareholders to evaluate effectiveness.***

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.

***Please refer to comments included in question 30.***

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.

***Please refer to comments included in question 30.***

### C. Corporate Governance Committee

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

Yes

No

Please give reasons and alternative suggestions.

*We commend the proposal to raise the importance of this crucial area and the underlying philosophy of using this as a tool to reinforce good corporate governance into a business through its business cycle. As such, the terms of reference seems to be a reasonable base. However, we feel there may be alternative approaches to achieve the same goals.*

*It is not a common practice to have a standalone corporate governance committee outside of the U.S. We believe that it is the board's responsibility to enforce good corporate governance practice and this message must not be lost.*

*We feel that the full board or other existing committee (possibly audit committee) could consume the corporate governance requirements outlined in this section. Rather than establishing a separate committee for corporate governance, we suggest the following may be an alternative:*

*1. The responsibility to enforce good corporate governance practice resides with the board and the ultimate responsibility to enforce this sits with the chairman. Accordingly, this message should be raised louder as a CP to define such roles and responsibilities.*

*2. The roles as stated in paragraph 141 could be incorporated into either the full board or an already existing sub-committee's terms of reference.*

*3. If a corporate governance committee is to be established, then we do support the idea of an INED chairman and a majority of such. There would be merit in always having an executive on the committee who is familiar with the day to day operations of the company.*

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.

*We are supportive of the proposal. Such report (prepared by either the corporate governance committee or the audit committee in question 39 above) could clarify the board's responsibilities and to allow the board to comment on actions and address the points noted in paragraph 141.*

Question 41. Do you consider that this report (as described in paragraph 140 of the Consultation Paper) should be published as part of the issuer's corporate governance report?

Yes

No

Please give reasons for your views.

***Yes, however we feel that this report, possibly prepared by a sub-committee should be adopted by the full board and issued on their behalf for stakeholders to review.***

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

Yes

No

Please give reasons for your views.

***Please refer to comments included in 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.

***Please refer to comments included in 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.

***It is appropriate for INEDs to be in the majority in any such committee.***

Question 45. Do you agree with the proposal to add a note to CP D.3.2 stating that the committee should include one member who is an executive director or non-executive director with sufficient knowledge of the issuer's day-to-day operations?

Yes

No

Please give reasons for your views.

***Yes, however, we feel it unlikely a NED would have sufficient knowledge.***

D. Audit committee

Question 46. Do you agree with our proposal to upgrade RBP C.3.7 (audit committee's terms of reference should include arrangements for employees to raise concerns about improprieties in financial reporting) to a CP?

Yes

No

Please give reasons for your views.

***This is consistent with the current recognized best practice. It is important to enable employees to raise concerns on financial reporting, internal control and other matters including fraud concerns in a timely and confidential manner. See also response to question 48.***

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.



***Meeting in private with the external auditor is a very symbolic and powerful gesture and it sends a strong message of auditor's independence to the staff of the company.***

***The following should also be noted:***

***A. We see that in other territories often the meeting is held on an annual basis instead of a semi-annual basis. We feel this is just as effective given the fact that once the routine is established most external auditors would then feel comfortable to contact the audit committee chair on ad-hoc issues when they occur and for this reason, we feel the formal meeting could remain on an annual basis.***

***B. We also see as best recognized practice where the same process of private meetings being held between the internal auditor and the audit committee. We feel that this has significant benefits as it helps position the internal auditor properly within an organisation and gives power and standing to the internal audit department. We would support this as an extension of your recommendations as stated in our cover letter.***

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.

***That said, we feel that it is more appropriate to introduce this proposal as a CP, rather than a RBP to be more aligned with question 46. We feel that this is an effective way to deter or to spot illegal and otherwise unacceptable behaviour within an organisation.***

***The following should also be noted:***

***1. The company should promote and emphasize that such a policy is anonymous in order to protect the "whistleblower" from retaliation. By doing so, it will encourage the "whistleblower" to report any illegal and otherwise unacceptable behaviour.***

***2. A report of all incidents recorded should be review by the company's general counsel and/or audit committee to ensure any potential issues are addressed.***

#### **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.

*While we agree with the proposal to disclose senior management remuneration by band as additional information to the investors, we note that the listed issuer is currently required to disclose the directors' emoluments for the past financial year, by name, and the aggregate amount paid to the five highest paid individuals at the issuer, on a no names basis, in the financial statements. In the event that the senior management remuneration has already been disclosed as directors' emoluments (where the senior management is also a director) or the aggregate amount paid to the five highest paid individuals (where the senior management is also one of the five highest paid individuals), it is not clear under the proposed listing rules whether the issuer should exclude those already disclosed as directors' emoluments or the aggregate amount paid to the five highest paid individuals from the senior management remuneration. We would recommend the Exchange to clarify how the issuer should deal with the disclosure of senior management remuneration by band when the senior management remuneration happens to overlap with the directors' emoluments or the aggregate amount paid to the five highest paid individuals. We feel it may be helpful if the code could reflect more clearly who should be classified as "senior management".*

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.

*To provide a broader picture of all aspects of remuneration, all compensation, including sales commissions should be included in disclosure.*

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.

***We feel the CEO should have his/her remuneration package disclosed since it enables shareholders to decide whether the package is regarded as value for money.***

Question 52. Do you agree with our proposal to upgrade RBP B.1.6 to a CP (a significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance, re-numbered CP B.1.5)?

Yes

No

Please give reasons for your views.

***This is consistent with comments included in question 49. A balanced performance assessment for both directors and management should serve as a basis to determine the compensation and other reward arrangements.***

## **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.

***We appreciate that many directors may feel uncomfortable initially both being assessed and assessing other directors and the board. However it is a recognised best practice in other parts of the world notably in the UK. We feel that this should be the case in Hong Kong as it would strengthen the accountability and ultimately raise the level of director and board effectiveness.  
For clarity, we would suggest you confirm in the code that this will be performed on the full board, coordinated/managed by the nomination committee.***

## **6. Board Meetings**

A. Considering a matter where there is a conflict of interest by a physical board meeting rather than a written board resolution

Question 54. Do you agree that, except for plain language amendments, the wording of CP A.1.8 (re-numbered CP A.1.7) should be retained (issuers to hold a board meeting to discuss resolutions on a material matter where a substantial directors or a director has a conflict of interest)?

Yes

No

Please give reasons for your views.

***It is critical that all related party and other connected transactions are clearly examined by fully independent directors. This should be a physical meeting since it would enable a much deeper debate than a paper one does.***

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.

***It is important that we embrace technology as much as possible to encourage participation. A large issuer may have directors located in different time zones and geographic areas which impose challenge to participate physically. However, we would recommend that the Exchange should require the issuer to disclose the method used for the meeting by individual director to promote transparency.***

#### 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.

***It seems appropriate. Further, to reinforce transparency, we propose that issuers should also disclose for each director the number of meetings attended both physically and virtually.***

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.

***It seems appropriate, further we suggest to be fully transparent attendance by alternatives could also be disclosed separately by name.***

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.

***This would help to support transparency in the business.***

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.

***We support the revision. The fact that a director has an interest renders him conflicted and therefore he should not vote.***

## 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.

***By removing the words “at the board level” makes it much clearer that there is a separation of roles between the management of the board and the day-to-day management of the business.***

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.

***By adding the words “clear” and “accurate” are merely reinforcing in spirit what we all expect a chairman to be doing. By amending this CP, it will add clarity and remove ambiguity.***

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.

***We speak to many directors who all maintain the attitude and style of a chairman is critical to the tone and quality of debate that a board can have. Raising the importance of this as a CP will further reinforce this key element of board performance.***

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.

***We feel someone must set the tone for good governance at board level. Thus, we feel it is fit and proper that the role be given to the chairman to ensure the basics are in place for good governance.  
The CEO will have a crucial role also in driving the same tone into the day to day management of the business.***

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.

***This is a natural extension of question 63.***

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.

***We feel the chairman should hold separate discussions with INEDs and NEDs in order to obtain their views on executive performance, direction and ability. As such, by raising this to a CP is a sensible option.***

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.

*This is consistent with our comments in respect of question 62. By raising this to a CP, it will reinforce the leadership role of the chairman.*

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.

*This is a natural extension of question 63 and 66.*

## **8. Notifying directorship change and disclosure of directors' information**

Question 68. Do you agree that we should amend Rule 13.51(2) to require issuers to disclose the retirement or removal of a director or supervisor?

Yes

No

Please give reasons for your views.

*To support the principle of transparency, we feel it is appropriate to include proper disclosure of retirement or removal of a director. Further, we feel it is important to allow the stakeholders to understand the reason for any removal if it is based on civil judgments of fraud, breach of duty or other misconduct involving dishonesty.*



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.

***Holding the CEO to the same requirements as that of question 68 (above) is in line with the greater principle of transparency.***

Question 70. Do you agree that we should amend Rule 13.51(2)(o) to cover all civil judgments of fraud, breach of duty or other misconduct involving dishonesty?

Yes

No

Please give reasons for your views.

***No comments.***

Question 71. Do you agree that we should amend Rule 13.51B(3)(c) to clarify that the sanctions referred to in that Rule are those made against the issuer (and not those of other issuers)?

Yes

No

Please give reasons for your views.

***No comments.***

Question 72. Do you agree with our proposal to upgrade RBP A.3.3 to a CP to ensure that directors' information is published on an issuer's website?

Yes

No

Please give reasons for your views.

***We feel that placing directors' information on the company website is a good idea and makes already public information more freely available, especially as there is not much additional effort or cost involved.***

Question 73. Do you agree with our proposed amendment to the CP (RBP A.3.3 upgraded) that directors' information should also be published on the HKEx website?

Yes

No

Please give reasons for your views.

***By extending the recommendations of question 72 to publish the information onto the HKEx website is aligned with the principle of transparency and again further makes already public information more readily available. In addition, this provides a centralised location where a person with multiple investments can go to one place to find all directors' information.***

## **9. Providing Management Accounts or Management Updates to the Board**

Question 74. Do you agree that we should add CP C.1.2 stating issuers should provide board members with monthly updates as described in paragraph 240 of the Consultation Paper?

Yes

No

Please give reasons for your views.

***This is considered better recognized practice in some other countries. We believe it is essential for directors to receive updates on a regular basis to ensure each member is aware of the company's financial performance and position provided the relevant information is succinctly highlighted. We feel it is one of the director's fiduciary duties to monitor and to understand the issuer's operations and its performance. Further, this will help enhance the directors' knowledge and assist in their timely identification of any reporting obligations.***

**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.

*No comments.*

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.

*No comments.*

**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.

***Leading corporate governance is encouraging directors to disclose their business model and corporate strategy they have in place to achieve their objectives publicly. We fully support this as a CP in Hong Kong. Indeed, we would like this to go further and request that the directors also highlight the key risks around the business model and the counter measures in place to mitigate them to an acceptable level (Subject to confidentiality).***

## **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.

***It is important that all directors have suitable insurance in order to attract and retain appropriate resources.***

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.

***This is in alignment with 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.

***The bundling of resolutions that are not business linked is not a shareholder friendly practice, we feel than any strengthening of the rules to “unbundle” such resolutions is a step in the right direction.***

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.

***No Comments.***

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.

***No Comments.***

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.

***No Comments.***

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.

***This appears to be a pragmatic enhancement.***

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.

***Rule 13.88 (new) is fully supported as it brings the same protocols for appointment and removal of auditors for all companies listed on the stock exchange.***

Question 86. Do you agree with our proposal to add, in new Rule 13.88, a requirement for shareholder approval to remove the issuer's auditor before the end of his term of office?

Yes

No

Please give reasons for your views.

***This is a natural extension of question 85 and is in line with better practice.***

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.

***It is important that an auditor has a mechanism to communicate to shareholders in these circumstances, particularly if they feel management is not conforming to generally accepted accounting practices or failing to adequately disclose material information.***

#### D. Directors' Attendance at Meetings

Question 88. Do you agree with our proposal to upgrade RBP A.5.7 (NEDs' attendance at meetings) to a CP (re-numbered CP A.6.7)?

Yes

No

Please give reasons for your views.

***It is in line with good governance that NEDs attend shareholders' meetings in order to increase the degree of communication channels potentially available to shareholders.***

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.

***It is in line with good governance that NEDs contribute to the development of an issuer's strategy and policy. To reinforce this we feel it is appropriate to raise this to a CP.***

Question 90. Do you agree with our proposal to introduce a new mandatory disclosure provision in Appendix 23 (re-numbered paragraph I(c) of Appendix 14) stating that issuer must disclose details of attendance at general meetings of each director by name?

Yes

No

Please give reasons for your views.

***This is both a good discipline and support transparency.***

Question 91. Do you agree with our proposal that CP E.1.2 state the issuer's chairman should arrange for the chairman of "any other committees" to attend the annual general meeting?

Yes

No

Please give reasons for your views.

***We feel that the chairman of all board committees should attend the company's AGM in order to support the chairman in case a relevant question is raised that only the sub-committee chairman can answer.***

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

Question 92. Do you agree with our proposal that CP E.1.2 state that the chairman should arrange for the auditor to attend the issuer's annual general meeting to answer questions about the conduct of the audit, the preparation and content of the auditors' report, the accounting policies and auditor independence?

Yes

No

Please give reasons for your views.



*Following the recent global financial crisis, the European Commission recently produced a green paper titled Audit Policy: Lessons from the crisis. This recommendation supports one of their aims, namely to close the expectation gap, by proposing a forum for shareholders to ask relevant questions of the auditors.*

*We support the proposal, however, there needs to be a legal environment supporting this to ensure there is no extension of the external auditors' duty of care.*

*We note that the territory whose law is referred to in the discussion document also has a cap of auditors' liability in place. We therefore recommend proper guidance be developed to support the practical application of this proposal in conjunction with HKICPA.*

*We believe it is appropriate to invite the external auditors to the general meeting to answer questions on their report, independence and the conduct of the audit. However, as noted above, there must be adequate protocols to ensure the external auditor can only be questioned on these areas and no other issues a shareholder may want to raise. Further, we feel the choice of accounting policies used is a topic for the board or CFO to comment on at a general meeting if a question is raised rather than the external auditor.*

## 2. Shareholders' Rights

Question 93. Do you agree with our proposal to upgrade the recommended disclosure of "shareholders' rights" under paragraph 3 (b) of Appendix 23 to mandatory disclosure (re-numbered paragraph O of Appendix 14)?

Yes

No

Please give reasons for your views.

***It should be a mandatory disclosure to make it easier for a shareholder to access such information.***

## 3. Communication with Shareholders

### A. Establishing a Communication Policy

Question 94. Do you agree with our proposed new CP E.1.4 stating that issuers should establish a shareholder communication policy?

Yes

No

Please give reasons for your views.

***Directors have an implicit duty to communicate to their shareholders, boards need therefore to have a clear annual communication plan which possibly could be published on the issuer's website.***

### B. Publishing Constitutional Documents on Website

Question 95. Do you agree with our proposal to add a new Rule 13.90 requiring issuers to publish an updated and consolidated version of their M & A or constitutional documents on their own website and the HKEx website?

Yes

No

Please give reasons for your views.

***In the spirit of transparency, we support the requirement for an issuer to publish its constitutional documents on its own website and on the HKEx website on a continuous basis. This will not cost much to implement. However, the issuer will need to ensure both versions are always fully consistent.***

C. Publishing Procedures for Election of Directors

Question 96. Do you agree with our proposal to add a new Rule 13.51D requiring an issuer to publish the procedures for shareholders to propose a person for election as a director on its website?

Yes

No

Please give reasons for your views.

*We feel it is important that shareholders are informed of the procedures to propose a person for election as a director. However, we would like to highlight that the method should not be limited to just the issuer's website, and that shareholders should be given the option to also obtain it through other means of communication such as traditional post/mail.*

D. Disclosing Significant Changes to Constitutional Documents

Question 97. Do you agree with our proposal to upgrade the recommended disclosure of any significant change in the issuer's articles of association under paragraph 3(c)(i) of Appendix 23 to mandatory disclosure (re-numbered paragraph P(a) of Appendix 14) ?

Yes

No

Please give reasons for your views.

*We agree, however, guidance should be prepared to help issuers decide what is "a significant change".*

**PART III: COMPANY SECRETARY**

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

Question 98. Do you agree with our proposal to introduce a new Rule 3.28 on requirements for company secretaries' qualifications and experience?

Yes

No

Please give reasons for your views.

***Suitable qualifications and experiences are the key attributes for any skilled jobs. We support them as two fundamental criteria for selecting a company secretary and provided that there is an adequate benchmark to determine what is “suitable” qualifications and/or experiences.***

Question 99. Do you agree that the Exchange should consider as acceptable the list of qualifications for company secretaries set out in paragraph 345 of the Consultation Paper?

Yes

No

Please give reasons for your views.

***No Comments.***

Question 100. Do you agree that the Exchange should consider the list of items set out in paragraph 346 of the Consultation Paper when deciding whether a person has the relevant experience to perform company secretary functions?

Yes

No

Please give reasons for your views.

***It is a natural extension of question 98.***

Question 101. Do you agree with our proposal to remove the requirement for company secretaries to be ordinarily resident in Hong Kong?

Yes

No

Please give reasons for your views.

***We see no reason why a suitably qualified company secretary has to be ordinarily resident in Hong Kong.***

Question 102. Do you agree with our proposal to repeal Rule 19A.16 so that Mainland issuers' company secretaries would need to meet the same requirements as for other countries?

Yes

No

Please give reasons for your views.

***In the spirit of convergence, this seems appropriate.***

Question 103. Do you agree with our proposal to add a Rule 3.29 requiring company secretaries to attend 15 hours of professional training per financial year?

Yes

No

Please give reasons for your views.

***While we agree with the proposal to require company secretaries to attend 15 hours of professional training per financial year, we would recommend the Exchange to clarify what is the definition of professional training for the purpose of meeting this requirement and what is the prescribed form of the training in order to qualify as recognised professional training, for instance, whether the training has to take the form of structured training organised by a recognised professional body, in question 15 we again stress that the critical issue is to ensure the training is of sufficient quality and relevance. We note that members of HKICS are required to accumulate at least 15 CPD or ECPD hours in each year. We would suggest the Exchange to clarify whether a company secretary who meets the HKICS requirement would also comply with the proposed rule.***

Question 104. Do you agree with the proposed transitional arrangement on compliance with Rule 3.29 in paragraph 350 of the Consultation Paper?

Yes

No

Please give reasons for your views.

***No Comments.***

## 2. New Section in Code on Company Secretary

Question 105. Do you agree with our proposal to include a new section of the Code on company secretary?

Yes

No

Please give reasons for your views.

***Yes, this codifying of better practice sets out the expectations of company secretaries and helps elevate their importance.***

Question 106. Do you agree with the proposed principle as described in paragraph 362 of the Consultation Paper and set out in full in page 27 of Appendix II?

Yes

No

Please give reasons for your views.

***See response to question 105.***

Question 107. Do you agree with our proposed CP F.1.1 stating the company secretary should be an employee of the issuer and have knowledge of the issuer's day-to-day affairs?

Yes

No

Please give reasons for your views.

***This reinforces the role and helps avoid a boiler plate approach.***

Question 108. Do you agree with our proposal described in paragraph 364 of the Consultation Paper, that if an issuer employs an external service provider, it should disclose the identity of its issuer contact person?

Yes

No

Please give reasons for your views.

***It would improve transparency.***

Question 109. Do you agree with our proposed CP F.1.2 stating that the selection, appointment or dismissal of the company secretary should be the subject of a board decision?

Yes

No

Please give reasons for your views.

***There are times where company secretaries may be pressured to record certain events in a certain ways for board minutes. The company secretary may disagree with the way specific events are portrayed. In order to protect the company secretary, we feel appointment or dismissal should be a board decision. We would point out, however, that if the CEO or the CFO are not directors then there may be grounds for similar board requirements particularly in the case of dismissal.***

Question 110. Do you agree with our proposed note to CP F.1.2 stating that the board decision to select, appoint or dismiss the company secretary should be made at a physical board meeting and not dealt with by written board resolution?

Yes

No

Please give reasons for your views.

***Yes, it is only at a physical meeting that the board has an opportunity to truly understand all the circumstances surrounding potential appointment/dismissals and discuss thoroughly.***

Question 111. Do you agree with our proposal to add CP F.1.3 stating that the company secretary should report to the Chairman or CEO?

Yes

No

Please give reasons for your views.

*It raises the value of their role in helping manage the organisation.*

Question 112. Do you agree with our proposal to add CP F.1.5 stating that the company secretary should maintain a record of directors training?

Yes

No

Please give reasons for your views.

*The company secretary would seem to be the most appropriate person to do this and is a natural extension of the requirement of company secretaries to retain information on directors' emoluments and borrowings.*

### CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS

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

Question 113. Do you agree with our proposal to include a definition in the Rules for the terms "announcement" and "announce" as described in paragraph 371 of the Consultation Paper?

Yes

No

Please give reasons for your views.

*No Comments.*



## 2. Authorised Representatives' Contact Details

Question 114. Do you agree with our proposal to amend Rule 3.06(1) to add a reference to authorised representatives “mobile and other telephone numbers, email and correspondence addresses” and “any other contract details prescribed by the Exchange may prescribe from time to time”?

Yes

No

Please give reasons for your views.

*It would make communications easier, especially if an issue is time critical.*

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

Question 115. Do you agree with our proposal to merge Appendix 23 into Appendix 14 for ease of reference?

Yes

No

Please give reasons for your views.

*It is reasonable to merge both appendices for ease of reference.*

Question 116. Do you agree with our proposal to streamline Appendix 23 and to make plain language amendments to it?

Yes

No

Please give reasons for your views.

*Same comment as question 1. Plainer writing should always be the objective as long as it does not create ambiguity.*

- End -