

18 March 2011

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

Dear Sirs

Re: Consultation Paper on Review of The Code on Corporate Governance Practices (“CG Code”) and Associated Listing Rules (December 2010) (“Consultation Paper”)

Tricor Services Limited is pleased to submit our response to Hong Kong Exchanges and Clearing Limited (“HKEx”) regarding certain proposals (“Proposals”) set out in the abovementioned Consultation Paper and related questions (“Questions”) set out in the associated Questionnaire.

We welcome HKEx’s continued efforts in promoting good corporate governance among issuers and in recognizing the crucial role of the company secretary in ensuring standards in this regard.

Our comments in the following are focused on practical issues in implementing the Proposals, from our perspective as professional corporate secretarial services provider.

1. Directors’ training (Questions 14 and 15)

Proposed Code Provision A.6.5:

- All directors should participate in continuous professional development of at least 8 hours per financial year to develop and refresh their knowledge and skills.
- The issuer should be responsible for arranging and funding suitable training, placing an appropriate emphasis on the roles, functions and duties of a listed company director.

Proposed Code Provision F.1.5:

- The company secretary should maintain a record of the training undertaken by directors for each financial year under A.6.5.

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We support the view that directors of issuers should keep up-to-date on new developments in laws and regulations to ensure statutory and regulatory compliance. However, we believe the proposed training duration to be over prescriptive.

In practice, some issuers do make use of the opportunity of full board meetings to arrange for a briefing or update on laws and regulations for directors. The duration of such varies depending on the professional qualifications and experience of the directors, the substance of the updating and any likely interacting factors in the prevailing economic environment.

We suggest the following adjustments to the proposed provisions:

- (i) The requirements of continuous training of directors and relevant record keeping by the company secretary could be introduced as code provisions, without specifying the number of training hours. The minimum of 8 training hours could be set out as a recommended best practice.
- (ii) If HKEx does consider it necessary to set out a minimum of 8 training hours as a code provision, a transitional period, e.g. by 31 December 2012 or at least one year after commencement of such code provision, should be provided to facilitate compliance.

2. Duty of Corporate Governance Committee (Question 40)

Proposed Code Provision D.3.1(b):

- Duties of Corporate Governance Committee should include reviewing and monitoring the training and continuous professional development of directors and senior management.

We do not support the proposed duty of the Corporate Governance Committee to review and monitor the continuous professional development of senior management.

The CG Code does not set out provisions on training for senior management, except for the staff of the issuer's accounting and financial reporting function, whose annual training programmes and budget would be discussed by the audit committee (Code Provision C.3.3(g)). The above proposed duty of the Corporate Governance Committee to review and monitor senior management's continuous training, in addition to that of directors, would pose undue burden on the issuer.

We suggest that the proposed duty of the Corporate Governance Committee in respect of directors' training to be included as a code provision whereas the proposed duty in respect of senior management's training could be set out as a recommended best practice.

3. **Written report of Corporate Governance Committee (Question 41)**

We do not support the proposal as described in paragraph 140 of the Consultation Paper regarding the publishing of a written report of the Corporate Governance Committee as part of the issuer's Corporate Governance Report.

The proposed Corporate Governance Committee deals with all matters relating to the issuer's corporate governance and statutory compliance, full details of which, including the conduct of duties of the said Committee over the year, would be disclosed in the issuer's Corporate Governance Report. A separate report of the said Committee would be a duplication of matters included in the Corporate Governance Report and hence unnecessary.

4. **Considering a matter where there is a conflict of interest by a physical board meeting rather than a written board resolution (Question 54)**

Proposed Code Provision A.1.7:

- **If a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board which the board has determined to be material, the matter should be dealt with by a physical board meeting rather than a written resolution.**
- **Independent non-executive directors who, and whose associates, have no material interest in the transaction should be present at such board meeting.**

Although we support the view that participation at board meetings would encourage active discussion among directors, we find the proposed code provision too restrictive. We consider that issuers are in the best position to make decision on dealing with its matters either by physical board meeting or written board resolution, provided that appropriate and adequate information is supplied to directors in good time to facilitate thorough consideration of the matter and the clearing up of any queries to enable an informed decision to be made.

Circulation of a written resolution does not forestall constructive comments from directors. With pervasive use of information technology, a draft resolution together with relevant supporting papers and any subsequent exchanges of views could be sent to directors speedily via email for comment. Directors could then sign the final agreed version of the resolution in reasonable time. This could ease the constraint of attendance at a physical board meeting or tele-conferencing by directors located in different time zones. In addition, a written board resolution normally requires consent by all or a majority of directors; whereas a physical board meeting only requires a necessary quorum to be present, i.e. two directors in most cases.

We therefore suggest giving issuers the flexibility to decide on dealing with transactions involving a conflict of interest either by a physical board meeting or by written board resolution, with explanation of such choice.

5. Maintenance of list of directors on HKEx and issuer's websites (Questions 72 and 73)

Proposed Code Provision A.3.3:

- **An issuer should maintain on its website and on the HKEx website an updated list of its directors identifying their role and function and whether they are independent non-executive directors.**

We suggest amending the proposed code provision to the following effect:

“An issuer should maintain on its website and on the HKEx website an updated list of its directors, by category of directors and by name.”

The proposed amendment is for focus and economy. Under the Listing Rules, issuers are currently required to maintain different lists of information and to disclose relevant list information in various corporate communications pursuant to Rules 13.51(2), 13.51B and 13.74, paragraph 12 of Appendix 16 and paragraph 2(c)(i) of Appendix 23. It would be too burdensome for issuers to maintain a further list of role and function of directors.

6. Bundling of resolutions (Question 80)

Proposed Code Provision E.1.1:

- **Issuers should avoid “bundling” resolutions unless they are interdependent and linked forming one significant proposal.**
- **Where the resolutions are “bundled”, issuers should explain the reasons and material implications in the notice of meeting.**

We suggest that more guidance and examples (apart from the example in the note to proposed Code Provision E.1.1, which states that separate resolution is required for nomination of each person as director) are necessary to demonstrate how resolutions may be “bundled”.

The Consultation Paper states that resolutions on changes to articles of association may be “bundled”. Please clarify, for example, if a proposal on changing several articles relating to appointment of director and service of notices would require separate resolutions to be passed at general meeting. In view of the current post-vetting approach adopted by HKEx, we suggest that it is important for HKEx to issue guidance notes with illustration of different scenarios in the implementation of rules and requirements to ensure adequate compliance.

7. Publication of procedures for election of directors (Question 96)

Proposed Listing Rule 13.51D:

- **The issuer must publish the procedures for shareholders to propose a person for election as a director on its website.**

We do not support this proposed Listing Rule.

As stated in the Consultation Paper, there does not appear to be a similar requirement in the jurisdictions that HKEx has examined. Given the fact that procedures for election of directors are normally set out in an issuer's articles of association and publication of issuer's constitutional documents on both the HKEx and issuer's websites is required under another proposal, shareholders already have easy access to such information.

8. Disclosing significant changes to constitutional documents (Question 97)

Proposed paragraph P(a) under Mandatory Disclosure Requirements of Corporate Governance Report:

- **Disclosure of any significant changes in the issuer's articles of association during the year**

We do not support this proposed mandatory disclosure item in the Corporate Governance Report.

Where an issuer amends its articles of association, the issuer is required to set out the amendment in full with explanation of the likely effects of the proposed amendment in a circular to shareholders pursuant to Listing Rule 13.51(1). In addition, alteration of articles of association would normally require the passing of a special resolution by shareholders. Full text of the resolution containing detailed changes in the articles would be included in the notice of general meeting. It would be an onerous task without additional benefit to shareholders for issuers to duplicate such disclosure in the Corporate Governance Report.

As an alternative, we suggest amending the proposed paragraph P(a) to the following effect:

“Disclose: Where the issuer has amended its articles of association during the year, the date of general meeting at which the relevant shareholders' approval was obtained.”

Shareholders who are interested in looking up details of the changes may refer to the relevant circular and/or notice of general meeting available on the HKEx and issuer's websites.

9. Transitional arrangement on training for Company Secretary (Question 104)

Proposed Listing Rule 3.29:

- **In each financial year an issuer's company secretary must take no less than 15 hours of relevant professional training.**

Note: A person who was a company secretary:

- (a) **on 1 January 2005 does not need to comply with rule 3.29 until 1 August 2011;**
- (b) **between 1 January 2000 to 31 December 2004 does not need to comply with rule 3.29 until 1 August 2013;**
- (c) **between 1 January 1995 to 31 December 1999 does not need to comply with rule 3.29 until 1 August 2015; and**
- (d) **on or before 31 December 1994 does not need to comply with rule 3.29 until 1 August 2017.**

We support HKEx's proposal for company secretaries to undergo a minimum of 15 hours' training each year. However, we do have 3 concerns in relation to implementation of proposed rule 3.29, as follows.

- (1) Our first concern relates to the proposed compliance date of 1 August 2011 for a person who was a company secretary on 1 January 2005. We believe this to be an impracticable deadline as it is too tight. Company secretaries need to plan well in advance, given their heavy daily schedules, to accumulate the requisite 15 training hours. We suggest that company secretaries should begin to accumulate their 15 training hours per year effective from 1 August 2011.
- (2) Our second concern relates to differentiation of company secretary by date/s imposed for implementation of rule 3.29. There could be cases where an individual worked as a company secretary of a listed issuer for some years, took a break and then resumed working in the company secretarial field. In such cases it would be difficult to determine in which of categories (a) to (d) the individual concerned should fit into.

As most of the existing company secretaries of Hong Kong listed issuers are professionals practising in Hong Kong, we suggest that such professionals should be accountable to their professional bodies regarding this requirement.

- (3) Our third concern relates to definition of 'relevant professional training' in proposed rule 3.29.

With regard to company secretaries with the relevant professional qualifications (i.e. HKICS members, solicitors/barristers or professional accountants), 'relevant professional training' is already identified by their respective professional organizations and 15 hours of such continuing professional development (CPD) annually is required for maintaining their professional qualification.

This is not the case for those company secretaries that do not possess equivalent professional qualifications, for example, those that continue to be recognized by HKEx as company secretaries by virtue of their experience in the post or in the business of the relevant issuer.

To ensure practice standards and statutory and regulatory compliance, we suggest guidance to be provided on the content and methodology of the requisite training, together with a list of recognized bodies for provision of such training, as applicable.

10. Matter not discussed in the Consultation Paper

- Publication of terms of reference of Corporate Governance Committee and other board committees (if any)

The Consultation Paper proposed publication of the terms of reference of the audit committee, nomination committee and remuneration committee of the board on both the HKEx and issuer's websites. There is no such requirement for the Corporate Governance Committee or other board committees (if any). We suggest specifying such requirement, if intended, for clarity.

Thank you for your attention.

Yours faithfully
For and on behalf of
TRICOR SERVICES LIMITED