

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.

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.

The proposed change will have the effect of barring any delegation of powers and responsibilities. This will cause a problem, particularly for non-executive directors "NEDs"), who generally are not expected to participate in the day-to-day operations. We consider that independent directors will inevitably have to delegate certain day-to-day responsibilities to management, such as responsibility for internal controls. Therefore, we would agree with the proposed extension of Rule 3.08 only if the word "all" is added before "their responsibilities" in the newly-added paragraph.

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.

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.

See our response to Q.5 below.

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.

While signing an annual confirmation would remind directors of their responsibility to spend sufficient time on an issuer's business, it would not necessarily be effective, in practice, to ensure they really do so. The reasonableness of any such annual declaration will still have to go through an evaluation process, which will take into account all facts and circumstances of the issuer and the director. We do not see how the submission of an annual declaration, *per se*, would contribute to the objective assessment process.

The term "sufficient time" is somewhat nebulous, as there is no simple rule to determine how much time is sufficient for directors to spend to perform their responsibilities to an issuer, given the different nature and complexity of different businesses. Directors will also have their own individual capacities and expertise and would, therefore, need to exercise personal judgement when signing the confirmation. Given the foregoing, it is not clear how nomination committees would be able to conduct the required reviews.

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.

See also our responses to Q.5 above and Q.30 below.

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.

We do not think it necessary for the provision to state explicitly that directors should limit their other professional commitments as, firstly, it is not clear what this means in quantitative terms and, secondly, directors are already asked to acknowledge that they will have sufficient time to meet their obligations and NEDs are asked to confirm annually that they have done so. These acknowledgments/confirmations should suffice.

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.

See also our response to Q.5 above and Q.30 below.

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.

It is not clear what is expected and we are concerned that this may be interpreted as stipulating a minimum number of hours. We are doubtful that it would be possible to specify a particular number of hours that directors are expected to spend on an issuer's business. Everyone works at a different pace. There is also risk that directors would focus too much on achieving quantitative rather than qualitative criteria.

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.

Partially agree. The existing recommended best practice ("RBP") requires a director to disclose to the issuer at the time of appointment, and on a periodic basis the number and nature of offices held in public companies and other significant commitments.

It may be relevant to ask directors to disclose other directorships or chief executive officer ("CEO") positions in listed or public companies, but to go beyond this may be considered to be "micro-managing". See also our response to Q.7 above.

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.

Directors need to assess their own capacity and risk when deciding how many independent non-executive director ("INED") positions they can reasonably hold. For example, a retired person would generally have a greater capacity than someone in full-time, or part-time, employment. Limiting the number of INED positions will not address the real issue, which is the overall workload of an individual director, taking into account all his or her personal commitments and facts and circumstances of the issuer.

An upper limit may be set, if at all, as a guideline, but it would need to be made clear that the number has to be considered in conjunction with the individual director's other commitments.

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

There should be a sufficiently high guideline upper limit on INED positions, to cater for INEDs who do not have any other significant commitments. An INED that has other significant commitments, full-time employment, etc., should accept fewer appointments. The number should be subject to more discussion within the community.

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.

Given that this is new area of corporate governance development and not an exact science, we would suggest that, at most, an RBP be introduced at this stage.

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.

We consider that the proposed Code Provision ("CP") A.6.5, is not sufficiently specific and that some concrete examples of the content of the required continuous professional development ("CPD"), such as those referred to in paragraph 64 of the consultation paper, should be included. It may also be advisable for reference to be made to the need for CPD to cover any important changes in industry-specific requirements. We suggest that relevant CPD training offered by professional bodies should be regarded as acceptable, particularly for directors who are members of the relevant bodies.

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 support this, while acknowledging that there is an element of arbitrariness about any specific figure. It is suggested that half of the minimum training hours should be verifiable training (i.e., four hours out of a minimum annual requirement of eight hours) while the other half could be non-verifiable.

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 methods contained in the consultation paper are acceptable.

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.

We support the 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.

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 sufficient for shareholders to be given the opportunity to vote for continuation of the INED concerned, given that, as recognised in the consultation paper, there is no particular evidence to suggest that an INED ceases to be independently minded after nine 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.

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.

Remuneration committees play an important role in the corporate governance and accountability framework and there is a need for them to have an INED majority to minimise the risk of conflicts of interest arising. Many companies already have a remuneration committee with a majority of INEDs.

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.

For the reasons indicated in our response to Q.21 above.

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.

This proposal is consistent with the relevant requirement in the listing rules for audit committees. (Under Rule 3.22, the board of directors of a listed issuer must approve and provide written terms of reference for the audit committee, which clearly establish the committee's authority and duties.)

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.

We agree with the proposal. However, it is not clear what should happen if a remuneration committee takes important decisions during the period when it is not compliant with the main requirements of the rules.

The reference to Rule 3.27 in the proposed rule does not seem to be necessary and results in some circularity.

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

In principle, we agree, but consider that a remuneration committee should, as far as possible, be discouraged from taking important decisions regarding the remuneration of directors during the three-month period. See also our response to Q.24 above.

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.

If independent external advice is required, it is important that a remuneration committee should have access to this.

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.

This alternative appears to weaken the current code provisions and so we query the need to provide for Model B. We consider that the effect of introducing a range of measures to strengthen the role and operation of remuneration committees, such as those proposed in Qs.21 to 26, will be diluted if final decisions on remuneration are made by boards on which INEDs are in the minority. Under the "comply or explain" approach, it is already open to an issuer to choose not to adopt Model A and to explain its decision.

Question 28. (i) Do you agree that where the board resolves to approve any remuneration with which the remuneration committee disagrees, the board should disclose the reasons for its resolution in its corporate governance report)? (ii) If your answer is "yes", do you agree that RBP B.1.8 should be revised and upgraded to a CP (re-numbered CP B.1.6).

(i) Yes No

(ii) Yes No

Please give reasons for your views.

See our response to Q.27 above.

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 consider that the reference to "performance-based" could instead be qualified by adding, e.g., "where appropriate" or "where applicable".

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.

For Qs.30 to 38, we consider that it is good, in principle, to enhance the existing role/functions of nomination committees, which could in turn enhance independence of the board. However, the consultation paper does not seek to explain or analyse why 63% of Hong Kong listed companies currently do not have a nomination committee. We believe that a survey amongst the companies concerned will provide useful input to the present discussion.

In addition, HKEx needs to explain more precisely what roles, functions and tasks should be within the remit of the nomination committee. For example, executive search is a complex and time-consuming activity and it should not be the role of the nomination committee to oversee this function.

In this context, the expanding workload and responsibilities of INEDs are a potential concern. The growing burden imposed on INEDs may discourage existing INEDs from continuing their directorships and other good candidates from seeking to take up INED positions. In our view, there needs to be more public debate on the role of, and expectations on, INEDs. While the comparatively low fee for INEDs generally in Hong Kong is sometimes said to be an issue, ultimately it is the balance of risk and reward that matters. It remains to be seen whether the package of new proposals in this consultation will adversely affect that balance.

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.

See our response to Q.30 above. However, where a nomination committee is in place, we agree that the chairman should be an INED, as this will strengthen the independent element on the committee, which is important given its basic role and responsibilities.

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.

Subject to clarification of the issues about role and responsibilities raised in our response to Q.30 above.

Question 33. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should be performed at least once a year?

Yes

No

Please give reasons for your views.

Where a nomination committee is in place, we agree with the proposal.

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.

Where a nomination committee is in place, we agree with the proposal.

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.

Where a nomination committee is in place, we agree with the proposal.

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.

Where a nomination committee is in place, we agree with the proposal.

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.

Where a nomination committee is in place, we agree with the proposal.

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.

Where a nomination committee is in place, we agree with the proposal. Similarly to the corresponding proposal for remuneration committees (see our response to Q.26 above), if a nomination committee considers that independent external support is needed, the committee should have access to this.

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.

See our response to Q.42 below.

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 agree, subject to our response to Qs.41 and 42 below. Ensuring that an issuer adopts a high standard of corporate governance practices is a board responsibility and, therefore, the board needs to be apprised of the outcome of the committee's reviews and work in this area.

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.

We partially agree. While we would support the proposal that a form of report from the relevant committee should be published in the company's corporate governance report, we have some reservations about requiring the report to be published in full, as this could cause the committee to be less than completely frank in its assessment. It may also result in an overly lengthy corporate governance report, containing large amounts of detail. Under the circumstances, consideration could instead be given to providing that a summary of the key matters contained report should be published. An RBP could be added to encourage issuers to publish the report in full on their website.

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.

While the functions of the proposed corporate governance committee ("CGC") are important, these may already be, or could be, carried out by other existing committees. The setting up of a CGC is not a requirement in many other markets and, therefore, cannot be said to be established best practice. In addition, the setting up of a dedicated CGC could detract from the role and responsibility of the board as a whole to monitor the implementation of good governance policies and practices. See also our response to Q.63 below.

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.

It gives flexibility to listed companies of different sizes and complexity to adopt different operational arrangements to meet corporate governance requirements, in accordance with their own needs and resources.

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.

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.

The rationale for this particular proposal needs further clarification. It would be useful for some companies to have an executive director or NED with sufficient knowledge of operations to take part in a committee responsible for governance matters. However, it is not entirely clear that this needs to be specified as a requirement, given that a CGC could invite one or more executive directors or NEDs to attend the meetings if considered necessary. If, on the other hand, the relevant functions are carried out by an existing committee, that committee might not have an executive director or NED member, in which case there could be inconsistencies between issuers, depending upon which committee is given responsibility for corporate governance matters.

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.

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.

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.

We agree, in principle, but caution needs to be exercised and some general guidance may need to be provided by HKEx, so that this does not become a channel that is misused by disgruntled employees or ex-employees for their own purposes. Issuers should set out a clear whistleblowing policy with detailed guidance for implementation according to their own business culture/environment.

4. Remuneration of Directors, CEO and Senior Management

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

Yes

No

Please give reasons for your views.

We understand that this is not a common requirement in other jurisdictions. There is already a requirement to disclose the remuneration of the five highest-paid employees, as well as the remuneration of individual directors, by name. It is not entirely clear that this proposal would add much value. Under the circumstances, it should be sufficient to retain the existing RBP B1.1.7.

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.

See our response to Q.49 above. Where senior management remuneration is disclosed, we see no reason to exclude sales commission.

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.

Where the CEO is not a director, and thus this information is not currently subject to disclosure, nevertheless it remains the case that the CEO is a key member of an issuer and his or her remuneration should be disclosed.

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.

We do not consider it necessary to mandate that a significant proportion of executive directors' pay should be performance based. However, in view of the concerns, brought to the fore by the financial crisis, about rewarding unsustainable, short-term performance, it is important to state explicitly that, where directors' remuneration is linked to performance, it should be linked to longer-term corporate/individual performance. We believe, therefore, that, rather than using the wording of RBP B.1.6, it would be preferable to adopt wording similar to the UK Code, referred to in paragraph 168 of the consultation paper (e.g., "The performance-related elements of executive directors' remuneration should be [stretching and] designed to promote to long-term success of the company").

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 support the proposal for an RBP and would encourage evaluations by an independent assessor rather than by the board itself, which will increase the credibility of the evaluation results and enhance the board's performance. The UK code provides a possible reference in this regard. Benchmark performance indicators should be developed/ adopted for a more meaningful evaluation.

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.

We do not see a need to require the holding of a meeting for such matters, when many other matters can be decided by a written resolution. Furthermore, if any individual director calls for a meeting to be held, then it must be held.

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.

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.

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 is not appropriate to count attendance by an alternate as attendance by the director himself or herself, particularly where there is a facility for directors to attend themselves by telephone or video-conferencing, as proposed in Q.55 above.

Question 58. Do you agree with our proposal that an issuer disclose, for each named director, the number of board or committee meetings he attended and separately the number of board or committee meetings attended by his alternate?

Yes

No

Please give reasons for your views.

C. Removing Five Percent Threshold for Voting on a Resolution in which a Director has an Interest

Question 59. Do you agree with our proposal to revise Rule 13.44 to remove the exemption described in paragraph 199 (transactions where a director has an interest)?

Yes

No

Please give reasons for your views.

We agree, in principle, but this should not mean that directors should necessarily be barred from voting on a proposed transaction with a company where they hold a nominal amount of shares in that company. Therefore, clear guidance on "materiality" must also be provided, otherwise this proposal could result in some unhelpful uncertainty.

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.

Question 61. Do you agree with our proposal to amend CP A.2.3 to add “accurate” and “clear” to describe the information that the chairman should ensure directors receive?

Yes

No

Please give reasons for your views.

We do not have any problem with this proposal, as such, but query whether it will still be necessary to retain the reference to "adequate information" if the other changes are made. The chairman will be responsible for ensuring that directors receive "in a timely manner" information that is "accurate, clear, complete and reliable". It is difficult to see how that could not also be adequate as well.

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 agree, in principle, but we note the current RBP and proposed provision states: "The chairman may delegate this responsibility to a designated director or the company secretary". This appears to contradict the purpose of the provision, although it is not clear whether this intends to refer back only to drawing up and approving the agenda, including taking into account matters proposed by other directors for inclusion on the agenda. Even if this is so, the chair should not delegate approving the board agenda.

We would suggest that it be made clear what day-to-day aspects of his or her responsibilities the chairman may reasonably delegate, but also that he or she must retain overall control and responsibility.

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.

While we agree with the spirit, in as much as this is to be seen as following from the chairman's role in leading and guiding the board, it should be made clear that this does not detract from the role and responsibility of the board as a whole to monitor the implementation of good governance policies and practices. See also our response to Q.62 above regarding delegation. Consideration should be given to linking this with the proposals in section C on establishing a corporate governance committee or committee exercising the relevant functions. It could be stated, for example, that if he or she is not a member or the chair of the relevant committee, the board chairman should meet that committee at least once or twice per year.

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.

We agree, in principle, although we have reservations about the supposed responsibility to "build consensus", as suggested in the question. However, we note that the CP is worded differently and more appropriately.

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 are not entirely clear about the purpose of holding a separate meeting with NEDs and would suggest that some further clarification is needed on this point. This proposal would add to formalities and its usefulness may be called into question if the chairman is an executive director, which he or she may be under the existing framework. We have suggested in our response to Q.66 that the chairman should preferably be a non-executive director. Assuming he or she is a NED, we would agree with upgrading the RBP to a CP regarding the chairman holding a separate meeting with INEDs.

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.

For Qs.66 and 67, the proposals should include some notes/ guidelines on how these objectives can be achieved. We also have some qualms about placing all these various responsibilities on the shoulders of the chairman. While the chairman should lead and direct the board, we would not want it to seem as if the board as a whole no longer needs to assume any responsibility for good governance and good shareholder communications, etc.

Furthermore, if the chairman is an executive director there is a danger that too much authority will be concentrated in the hands of one person, notwithstanding the separation of board and management referred to in Q.60 above. For this reason, we would also suggest that consideration be given to introducing an RBP or CP that the chairman should be a non-executive director, which in practice is probably already the case for the majority of larger issuers.

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.

See also our response to Q.66 above.

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.

We agree. The CEO plays an important role in the company. See also our response to Q.51 above.

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.

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.

We support the strengthening of transparency in this area.

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.

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.

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.

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.

We are not convinced that monthly management updates are necessary for NEDs (including INEDs) to perform their duties.

As a starting point, HKEx may consider introducing a generally-worded CP that the board should be provided with updates containing sufficient information (as determined by the board) with sufficient regularity to enable NEDs to carry out their monitoring function. More detail as to content and regularity could then be included in an RBP, if necessary.

In our view, quarterly updates should be sufficient for NEDs, in the first instance, which aligns with the minimum number of board meetings required to be held annually under the Code. When combined with the right of NEDs to request information at any time if they wish, this should enable NEDs to perform their duties. If NEDs observe matters requiring their attention in a quarterly update, they would be able to seek further or more frequent information. However, generally, NEDs should not need to involve themselves in the day-to-day management of the company, whereas a requirement for monthly updates could result in a move in that direction.

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.

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.

In principle, we agree but the rule changes do not appear to be shown in the consultation paper. They should be made available for review.

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.

We support additional transparency, but further guidance must be provided as to what is expected by the requirement for directors to explain "the basis on which the issuer generates or preserves value over the longer term (the business model) and the strategy for delivering the issuer's objectives".

In addition, the reference to "the separate statement containing a discussion and analysis of the group's performance" specified in the proposed CP should be cross-referred more specifically to Appendix 16, paragraph 32, on the management discussion and analysis, to make clear that there is no requirement for a new, separate statement to be produced.

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.

This may help to encourage appropriate candidates to take up directorships although the availability of adequate directors' and officers' insurance depends on the conditions in the insurance market at any given time.

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.

While we support the principle, the adequacy of insurance would depend on the assessment of an issuer's board, so it is not entirely clear how this can be enforced, except perhaps in cases where the insurance purchased is manifestly inadequate. HKEx needs to explain its expectations of issuers more clearly. If, generally, what should be regarded as "adequate" is for the board to determine, this should be made clear. If, on the other hand, the CP is intended to be more than merely aspirational and to prescribe an objective criterion, more guidance will need to be provided.

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 principle should be supported. The proposed wording of CP E.1.1 is, however, ambiguous and we suggest amending it as follows:

"Issuers should avoid "bundling" resolutions, unless they are interdependent and linked and form one significant proposal. ~~Where the resolutions are 'bundled',~~ in which case issuers should explain the reasons and material implications in the notice of meeting.

B. Voting by Poll

Question 81. Do you agree with our proposal to amend Rule 13.39(4) to allow a chairman at a general meeting to exempt procedural and administrative matters described in paragraph 274 of the Consultation Paper from voting by poll?

Yes

No

Please give reasons for your views.

We agree, in principle, but would suggest that, for greater clarity, the more specific examples in paragraph 275 of the consultation paper be included in a note to the rule.

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.

See also our response to Q.81 above.

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.

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.

Although it should be obvious, to avoid any doubt and the risk of abuse, it should also be stated that the chairman must explain the procedures for conducting a poll before the polling takes place.

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.

<p>We agree that, as far as possible, there should be consistency with the Companies Ordinance. The ordinance also addresses the issues of filling a casual vacancy and this should be covered in the listing rules as well, having regard to the issues raised in our response to Q.86 below.</p>
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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.

While this proposal is supportable, in principle, and would help create a level playing field by aligning the requirements for non-Hong Kong companies with the Companies Ordinance requirement, there are some practical concerns. Two examples are quoted in paragraphs 284 and 285 of the consultation paper of situations in which it would seem to be unduly cumbersome and expensive to have to convene a shareholders' meeting to remove the auditors. However, no alternative arrangement is proposed in the consultation paper. It would be preferable to be able to distinguish between those routine cases, where a public announcement confirming that there are no untoward circumstances should be sufficient, from those cases, such as the example referred to in paragraph 287 of the consultation paper, where the practical issues should be secondary to the governance imperative that shareholders should have a say in the removal of the auditors.

For potentially more routine cases, the arrangements such as the following should be adequate:

(1) Have shareholders ratify, or not, the change of auditors at the next AGM, with the board required to make a recommendation and explain the reason for the change. Include a requirement to have a statement tabled by the former auditors recording any comments they may have on their ceasing to act (subject to the proposed qualification under the Companies Bill regarding possible misuses of this right);

(2) to require a physical meeting of the board with a majority of INEDs present to consider and make any change, with the former auditors having the right to attend in person or lay before the meeting any written representations they may wish to make; and

(3) to require the audit committee to approve any proposed change of auditor and to make a recommendation to the board on this issue, after conducting a physical meeting with both the auditors and the management, as well as private sessions with each.

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.

Some flexibility may be required as it would be expensive, and may not add value, to bring to the attention of the shareholders that, for example, on the audit firm has been reorganised or merged with another. In such cases, the requirement could be that the company is required to include, with the notice of the AGM, any statement that the former auditors wish to make. See also to our responses to Qs.85 and 86 above.

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.

We agree partially. We support encouraging regular attendance and active participation by INEDs and NEDs at board and committee meetings. Some guidance on what would be regarded as complying with this CP would be helpful.

As regards attendance by all INEDs and NEDs at general meetings, we consider that this should be for the issuer to decide.

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.

While we have no problem with the sentiment, this is subject to a concern that the wording of some of the proposed new and upgraded CPs is aspirational rather than quantifiable, which will make the CPs more difficult to monitor and enforce and, therefore less effective. We would prefer to see more robust and quantifiable wording in the CPs, while more aspirational statements, encouraging issuers to adopt good practices, and further elaboration of the CPs, could be included in RBPs.

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.

While it is important that attendance at board and key board committees should be disclosed, we do not see the purpose of disclosing attendance at general meetings, given that, unless a director has a specific role to play, there may not be a need for him or her to attend. For this reason disclosure of attendance at general meetings does not serve the same corporate governance imperative.

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.

The intention of retaining the wording "as appropriate" in brackets, after "any other committees", is not entirely clear. If it simply means that an issuer may not have other committees, then it can probably be dropped. If, on the other hand, it is intended to give the board chairman the discretion to decide whether or not the chairmen of other committees should attend the AGM, this would not be suitable as a comply or explain CP. In any event, we consider that only the chairmen of the key committees should be required to attend the AGM.

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.

We note that a similar requirement is not commonplace in other markets and have reservations about introducing it in Hong Kong. If this proposal is to proceed, the scope and limitations in relation to the matters that the auditors can address at an AGM must be made very clear, and guidance would need to be developed involving the Institute, the auditing profession and their insurers, and HKEx.

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.

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.

We agree, in principle, but more detailed guidelines on what would constitute an appropriate shareholder communication policy would be helpful.

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.

It is considered that M&As or constitutional documents are quite generic in nature and the proposed change would not add much value for shareholders and investors. However, there should be a clear policy and procedure for shareholders to be able to access such documents, and these should be required to be disclosed.

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.

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.

There may be different views as to what constitutes a "significant change". For the sake of clarity, "significant change" should be clearly defined.

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.

While we agree in principle, more information should be given as to the specific benchmarks HKEx will adopt to assess "relevant experience", under Note 2 to Rule 3.28.

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.

Item (d) in paragraph 345 refers to "being a professional accountant (as defined in the Professional Accountants Ordinance)". The term "professional accountant" should be changed to "certified public accountant", pursuant to the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004).

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.

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 note that there is currently no requirement for any director of a Hong Kong-listed company to be ordinarily resident in Hong Kong. While we understand that the implicit aim may be to establish a level playing field between the company secretary requirements for issuers incorporated in the Mainland and those issuers incorporated elsewhere outside of Hong Kong, from an investor protection point of view, we would be concerned about dispensing with requirements for any key representatives of listed companies to ordinarily reside 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.

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.

The proposal is acceptable.

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.

The proposed implementation timetable, which could extend up until August 2017 for some company secretaries, is considered to be too long, particularly for the experienced company secretaries. Full compliance with new arrangements should be achieved more quickly than proposed.

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.

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.

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.

The proposed CP F.1.1 appears to be contradictory, as drafted. The aim of this proposal seems to be to encourage an issuer to have a company secretary who is its employee, while not disallowing the use of an outside service provider altogether.

We would suggest, therefore, that the first sentence be amended as follows: "The company secretary should preferably be an employee of the issuer and have day-to-day knowledge of the issuer's affairs."

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.

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.

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.

The filling of a casual vacancy for a director can be done by written resolution, without holding a physical board meeting, so we see no reason why the situation should be different for a company secretary.

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.

The company secretary should report to the board. He or she may sometimes have to take a position opposed to that of the chairman or CEO. Given that both the chairman and the CEO may be executive directors (but see also our response to Q.66 above), and the company secretary plays a significant role in, amongst other things, advising the board as whole on governance matters, it is not advisable that he or she report to the chairman or CEO.

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.

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.

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.

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.

While we do not disagree with the proposal, the different standing of the code and corporate governance report ("CG report") should be very clearly highlighted, in particular that non-compliance with the mandatory disclosures in the CG report constitutes a breach of the listing rules.

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.