香港董事學會
The Hong Kong Institute of Directors

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

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

The Hong Kong Institute of Directors ("HKIoD") is pleased to forward our response to the captioned consultation paper.

HKIoD is Hong Kong's premier body representing professional directors working together to promote good corporate governance. We are committed to contributing towards the formulation of public policies that are conducive to the advancement of Hong Kong's international status.

In developing the response, we have consulted our members and organised focused discussions.

Should you require further information regarding our response, please do not hesitate to contact me on

With best regards

Yours sincerely
The Hong Kong Institute of Directors

Enc:-
1. Response to the Consultation Paper
2. Appendix I: The HKIoD Code of Conduct
3. Appendix II: Summary of Guidelines for HKIoD Membership Accreditation Through CPD

香港董事學會有限公司 香港德輔道中19號環球大廈1008 1008 World-Wide House, 19 Des Voeux Road Central, Hong Kong
The Hong Kong Institute of Directors Ltd 電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

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The Hong Kong Institute of Directors Response to the Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules (The "Consultation Paper")

In relation to the Consultation Paper, the Hong Kong Institute of Directors ("HKIoD") is pleased to present its views and comments.

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Our responses to the consultation questions are as follows:-

Plain writing amendments
Question 1

As to Question 1, we focused on the principles underlying the proposed changes. We may have further comments on the drafting details at a later stage.

Directors - Director's duties
Questions 2-3

As to Question 2, we AGREE with proposed changes to Rule 3.08 to clarify the responsibilities the Exchange expects of directors.

- The proposal is consistent with the values embodied in the HKIoD Guidelines for Directors; the HKIoD Guide for Independent Non-Executive Directors.
- The proposal is also consistent with the *HKIoD Code of Conduct*. A copy of the document (Appendix I) is appended to this response and it can also be found on the HKIoD website at http://www.hkiod.com/document/code_of_conduct_eng.pdf

As to Question 3, we AGREE with the addition of a Note to Rule 3.08 to refer to the guidance issued by the Companies Registry and the two guides by HKIoD.

- HKIoD consider the two guides to be essential reference tools for directors, and in conjunction with the Companies Registry's guidebook, they will give directors useful guidance on how to meet their duties in practice.
- In addition to the two guides organized and published by HKIoD, we also recommend the Exchange to seriously consider stipulating *HKIoD Code of Conduct* as a framework of common reference for the conduct of directors in fulfilling their duties.

Directors – time commitment
Questions 4-10

As to Question 4, we AGREE with the introduction of a new duty (CP A.5.2(e)) in nomination committee's written term of reference that it should regularly review the time required from a director to perform his responsibilities to the issuer, and whether the individual director is meeting that requirement.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- This is consistent with what is normally expected to be the task of a nomination committee, which is to identify appropriate persons to serve on the issuer's board and to determine if such persons should warrant a re-nomination to serve when the term expires. Among other factors, the ability of a director to devote sufficient time to attend to the issuer's board matters is a key consideration.
- See also our response to Question 7.

As to Question 5, we AGREE with the introduction of 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.

- HKIoD believes all directors must devote sufficient time and attention the affairs of the company. See, e.g., HKIoD Guidelines for Directors; HKIoD Guide for Independent Non-Executive Directors; and HKIoD Code of Conduct.
- See also our response to Question 8.

As to Question 6, we AGREE with the proposal to include a disclosure requirement in the corporate governance report that NEDs have made annual confirmation to the nomination committee that they have spent sufficient time on the issuer's business.

- The disclosure requirement should not create a heavy burden on the issuer or its NEDs.

As to Question 7, on whether to "limit a director's other professional commitments", we have the following comments.

- HKIoD believes all directors must devote sufficient time and attention the affairs of the company. See, e.g., HKIoD Guidelines for Directors; HKIoD Guide for Independent Non-Executive Directors; and HKIoD Code of Conduct.
- A director, whether ED or NED, should acknowledge to the issuer that he will have sufficient time to meet his obligations.
- The concern for us is the proposed wording "should limit the number of his other professional commitments". The emphasis should be on whether a director has made an honest judgment as to the ability to devote sufficient time, not a broad brush requirement on the director to "limit the number of his other professional commitments". We note that it would not likely to be a major issue for an ED (and such would normally be dealt with as part of the employment contract between the ED and the issuer). But for NEDs, the situations vary from individual to individual.
- The better approach may be to expand CP A.5.3 along the lines of the UK Code. NEDs should disclose their other significant commitments before appointment in order for the issuer to make an assessment on whether the NEDs can devote sufficient time. NEDs should timely disclose to the issuer any change to his significant commitments. This is consistent with CP A.5.6. See also our response to Question 10 and our comments to Questions 11-13.

As to Question 8, we AGREE with the proposal to expand CPA.5.3 to state that an NED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- Requiring an NED to give the annual confirmation should not create a heavy burden. The issuer and the NED should have discussed and agreed on the NED's expected contribution and time commitment. See also our response to Question 5.

As to Question 9, we AGREE with the proposal to upgrade RBP D.1.4 to a CP and amending it to state an NED's letter of appointment should set out the expected time commitment.

- It is reasonable for the letter of appointment to state the expected time commitment. The issuer and the NED should have discussed and agreed on the NED's expected contribution and time commitment.
- HKIoD believes all directors must devote sufficient time to attend to the company's affairs. See, e.g., HKIoD Guidelines for Directors; HKIoD Guide for Independent Non-Executive Directors; and HKIoD Code of Conduct.

As to Question 10, we AGREE with the proposal to upgrade RBP A.5.6 to a CP and amending it to encourage timelines of disclosure by a director to the issuer on any change to his significant commitments.

- An issuer should have the information to assess for its purpose whether a director is still able to devote sufficient time to its affairs.
- A director should continually assess his own situation to ensure that he is able to meet his obligations.

Directors – time commitment – multiple directorships
Questions 11-13

As to Question 11 and Question 12 and Question 13, we have these comments.

- Supply of quality INEDs: To limit the number of INED positions an individual may hold will likely result in a need for more people willing and able to become INEDs. It is essential that we find individuals who have the skills, knowledge and qualities to meet corporate governance demands of today to fill INED positions, not just to make up the numbers. HKIoD maintains a roster of members who have positively indicated their willingness and who have conscientiously equipped themselves to become INEDs.
- Who is to judge?: Situations vary from individual to individual and from issuer to issuer. A certain number of INED positions may be too many for some, but quite manageable for others. We believe the emphasis should be on whether a director has made an honest judgment as to the ability to devote sufficient time, not a broad brush requirement on the director to limit the number of INED positions he may hold. In order for issuers to make an assessment for its purpose, directors should disclose "other significant commitments" before appointment and should timely inform the issuer of any change to his significant commitments. Many who serve as INEDs are also engaged as governors or council members of public bodies or NGOs. This should also be a consideration when assessing whether a person is able to devote time and attention to any issuer (or, for that matter, to any one of such public bodies or NGOs). See also our response to Question 7 and Question 10.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- Soft cap only?: For the reasons above, it may be wise to avoid mechanistic limits but to allow issuers and their directors the flexibility to evaluate the situation according to their circumstances. A plausible method is to introduce a limit only as a "soft cap" (and only in the form of a CP for issuers to comply or explain). For example, if a cap is to be imposed, the next issuer(s) beyond the cap to enlist the service of the same person shall be required to give rationale (and disclose such in the corporate governance report) on why that person is still favored or preferred despite exceeding the cap. Issuers within the cap will be "diluted" of the person's time and attention. Some thoughts need to be given on whether it is practical or plausible for these issuers to disclose that fact and give appropriate explanations in their corporate governance reports.

Directors – directors' training
Questions 14-16

As to Question 14, we AGREE with the proposal to upgrade RBP A.5.5 to a CP, that directors should participate in continuous professional development.

- HKIoD has long supported the promotion of corporate governance training. Corporate governance is crucial to the development of companies, and directors are ultimately responsible for corporate governance. Having directors who have up-to-date skills, knowledge and qualities to meet the corporate governance demands of today and who are attuned to best corporate governance practices can only benefit the issuers and their shareholders.

As to Question 15, we support stipulating the minimum hours of training to be eight.

- The Exchange should encourage all listed company directors to exceed the stipulated minimum and reach higher standards.
- HKIoD now requires a minimum total of 10 hours per year for its members and a recommended best practice of 20 hours per year. We believe those to be suitable requirements.

As to Question 16, we have the following comments on the issue of "training methods".

- We are aware that there are practical difficulties in determining how to "accredit" or "recognize" training programs for purpose of satisfying the proposed CP. It can be quite difficult to draw the line for suitable content or syllabus for "directorship" training. We do note that, too loose or too broad a standard could mean training activities with no real effect at improving skills.
- HKIoD already offers its members a variety of training courses and events with opportunities for learning. HKIoD also recognizes self-directed learning. We believe in allowing a broad range of learning activities to qualify as accredited training activities. The emphasis should be on substance rather than form, that "continuing professional development" may be attained not only from class-room activities but also in a variety of other ways, some incurring tuition costs and some incurring service given, and some involving interactions with others and some involving self-study. A copy of Summary of *Guidelines for HKIoD Membership Accreditation through CPD* (Appendix II) is appended to this response.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

Directors – INEDs to form one-third of board
Question 17-18

As to Question 17, we support upgrading RBP A.3.2 to a Rule requiring "at least one-third" of an issuer's board to be INEDs, but we have the following comments.

- Issuers design their boards: Issuers can satisfy the "one-third INED" requirement by decreasing the number of EDs and NEDs, or by increasing the number of INEDs, or both. Given the heightened requirements and expectations on various board committees as proposed in the Consultation Paper, we think issuers will find value in recruiting more number of willing and able persons to join their boards as INEDs. It remains the decision of each issuer's board (and its nomination committee) to determine the right size and mix of attributes of the board to best suit the issuer's needs.
- Supply of quality INEDs: The proposal will likely result in a need for more people willing and able to become INEDs. It is essential that we find individuals who have the skills, knowledge and qualities to meet corporate governance demands of today to fill INED positions, not just to make up the numbers. HKIoD maintains a roster of members who have positively indicated their willingness and who have conscientiously equipped themselves to become INEDs.
- Proper initial training:
  - In the market today, it is usually an issuer's sponsor and advisors who shortly before listing arrange for sessions to inform would-be directors of their obligations once the issuer becomes publicly listed. Regrettably, the exercise was sometimes seen as just some hoops to be jumped en route to listing and done in a perfunctory manner.
  - HKIoD believes all company directors, when they first assume their posts, should have a firm grounding of the skills, knowledge and qualities required to meet the corporate governance demands of today. HKIoD long advocates the importance of corporate governance training.
  - Given the possibility of a larger number of individuals with limited prior experience in company directorship being appointed to fill the additional INED positions, HKIoD wants to emphasize that proper initial training for first-time directors is one key aspect of the total quality of corporate governance training. HKIoD offers a variety of training courses, including many which are suitable for first-time listed-company directors.
- Proper induction: HKIoD also believes it is crucial for issuers to provide proper induction to newly appointed directors, whether they are beginning or seasoned company directors.
- Majority INEDs?: Some thoughts could be given to whether "majority INED" can be introduced as a RBP. We are aware of the well-versed arguments made on its practicality or suitability for the Hong Kong market, but we are also aware of well-founded postulation that it could make INEDs collectively better able to play their director roles. With INEDs comprising the majority, their active involvement in board matters becomes more necessary and their time commitment to do so better valued.

As to Question 18, we welcome a transitional period, but have reservations.

- See our response to Question 17.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

Directors – "independence"
Questions 19-20

As to Question 19, we AGREE with the proposal to upgrade RBP A.4.3 to a CP that shareholders should vote on a separate resolution for the further employment of an INED who has served more than 9 years

- This should not create a heavy burden on an issuer, but shareholders will be made more aware of the potential issue of whether the director remains "independent".
- An independent director serving too long may make it difficult for him to discharge the oversight function. We believe that issuers can find it beneficial to consider some turnover at appropriate times to keep a board "fresh". Having new bodies to serve as directors can bring in different expertise and experience to match the changing needs of the issuer.

As to Question 20, we AGREE with the proposal to upgrade RBP A.4.8 to a CP, to state that an issuer should include explanation why an individual should be elected and why the issuer considers him independent.

- Because of the role of INEDs in protecting all shareholders as a whole, it is important that shareholders can make an informed decision on the appointment of the nominated INED.
- HKIoD believes in a "state of mind" notion of independence. An INED must also ask himself whether influence of personal interests and motives of personal gain will interfere with the exercise of independent judgment. See, e.g., HKIoD Guide for Independent Non-Executive Directors.

Board committees – remuneration committee
Questions 21-25

As to Question 21, we AGREE with the proposal to make it a Rule to require issuers to establish a remuneration committee with a majority of INEDs.

- This should not create a heavy burden on issuers since the vast majority of issuers have already have established a remuneration committee with a majority of INED members.
- To require only "majority INEDs" is appropriate. Clearly the board needs objectivity and an independent view in matters such as executive compensation. But there is also the need to promote board/committee dynamic and performance that also fosters an effective partnership between the board and management to benefit the issuer and its shareholders.

As to Question 22, we AGREE with the proposal that the remuneration committee should be chaired by an INED.

- An INED chair (together with a majority INED membership) provides a suitable and desirable counterweight to the possibility of undue influence from executive directors and the management generally.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

As to Question 23, we AGREE with the proposal to make it a Rule to require issuers to have written terms of reference for the remuneration committee. We further AGREE with the proposed change to CP B.1.4 to state that an issuer should include the written terms of reference and an explanation of the authority delegated to the remuneration committee on its website and the HKEx website.

- Directors should take a leadership role in defining the bounds of their over-sight and responsibilities. A board and its committees should be pro-active in setting their agenda. Executive director and senior management remuneration is an important corporate governance matter that is within a board's oversight responsibilities. The way a remuneration committee handles this oversight responsibility should be transparent to the market.
- The terms of reference of the remuneration committee constitutes essential information about the issuer that should be transparent to market.
- It is appropriate to make the written terms of reference available on the HKEx website as well as the issuer's website. The HKEx website is an appropriate central repository for such information.

- See also response to Question 27 and Question 28.

As to Question 24, we AGREE with the proposal to add a new Rule 3.27 requiring issuers to make an announcement if it fails to meet the obligations of Rule 3.25, 3.26 and 3.27.

- We hold the view that the status of issuer's compliance with the obligations of Rule 3.25, 3.26 and 3.27 is essential information about the issuer that should be transparent to the market.
- Depending on the actual circumstances, disclosure of the relevant extenuating factors causing the non-compliance and the action plans to come into compliance can alleviate investor concerns as to the issuer's corporate governance practices.

As to Question 25, we AGREE with the proposal that issues who fail to meet Rules 3.25, 3.26 and 3.27 should have three months to rectify the situation.

- We believe "three months" is a reasonable time frame for issuers to rectify the situation.

Board committees – remuneration committee – "independent" professional advice
Question 26

As to Question 26, we AGREE that we should add "independent" to the professional advice made available to a remuneration committee.

- We hold the view that the board and its committee should be granted the authority to access independent professional advice at issuer's expense.
- We also maintain the view that such authority should be used sparingly, in situations where there is real conflict or some other genuine need. The issuer's management should find it in the issuer's best interest to provide or procure pertinent information and useful assistance to the board and its committees.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

Board committees – remuneration committee – Model A vs Model B
Questions 27-28

As to Question 27, we AGREE with the proposal to revise CP B.1.3 (re-numbered CB B.1.2.) as described in paragraph 117 to accommodate Model B.

- We hold the view that the ultimate authority always lie in the board, but the board can delegate. The scope of delegation should be set out in constitutional documents and the terms of reference, and such should be disclosed. See also our response to Question 22 and Question 28.

As to Question 28, we AGREE that the board should disclose its disagreement with the recommendations of the remuneration committee in the corporate governance report. We further AGREE with the proposal to revise and upgrade RBP B.1.8 to a CP.

- Shareholders have reason to know why the full board takes a different view than what was recommended by the committee.
- The corporate governance report is the appropriate place to make such disclosure.
- We do not think that the need to explain the disagreements must necessarily just apply to Model B. It would seem that Model A must necessarily imply the board's ultimate authority; just that it has been delegated to the committee. Depending on the actual provisions in the issuer's constitutional documents, it is not inconceivable that a Model A board could possibly maneuver the necessary procedures steps to revoke that delegation of authority and then resolve to approve remuneration with which the committee disagrees. This could be a rare occurrence, but our point is, the focus should be on requiring issuers to fully disclose the delegation of authority to the remuneration committee (and do so not by vague reference to Model A or Model B) through publishing its constitutional documents (see our response to Question 95 and Question 97), making available the written terms of reference and through disclosure in the corporate governance report as described in Consultation Paper paragraph 117.

Board committees – remuneration committee – "performance-based" remuneration
Question 29

As to Question 29, we support the proposal to delete "performance-based" from CP B.1.3(c) (re-numbered CP B.1.2(b)).

- We think it should suffice for the terms of reference to state, among other things, "to review and approve the management's remuneration proposals with reference to the board's corporate goals and objectives".
- Executive compensation should align with long-term performance of the corporation and shareholder value. An issuer's board (and its remuneration committee) will want to link at least some portion of executive compensation to well-conceived measures of performance with reference to the board's corporate goals and objectives. See also our response to Question 52.
- We generally support the notion of board and director self-evaluation. We think there is a strong case to make board self-evaluation of performance a CP, not RBP. See our response to Question 53.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

Board committees – nomination committee
Question 30-38

As to Question 30, we support the proposal to upgrade RBP A.4.4 to a CP, regarding the establishment and composition of a nomination committee.

- There is a strong argument for making it a Rule to require establishment of a nomination committee, but we think that the proposal to make it a CP should give sufficient impetus for issuers to establish such committee.
- To require only "majority INEDs" is appropriate. Clearly the board needs objectivity and an independent view in matters such as recruiting and nominating suitable board candidates. But there is also the need to promote board/committee dynamic and performance that also fosters an effective partnership between the board and management to benefit the issuer and its shareholders.

As to Question 31, we AGREE that the nomination committee's chairman should be an INED.

- An INED chair (together with a majority INED membership) provides a suitable and desirable counterweight to the possibility of undue influence from executive directors and the management generally.

As to Question 32, we AGREE with the proposal to upgrade RBP A.4.5 to a CP, regarding the nomination committee's terms of reference.

- We think Consultation Paper paragraph 120 covers the essential areas. Issuers can further tailor the terms of reference in manners not inconsistent with the principles set out therein to meet their specific needs.

As to Question 33 and Question 34, we AGREE that the nomination committee should review the structure, size and composition of the board "at least once a year", and we further AGREE that the recommendations from the nomination committee's review of the structure, size and composition of the board should complement the issuer's corporate strategy.

- We note the wording is "at least once a year". The committee should continually assess the structure, size and composition of the board as to be consistent with and able to carry out the corporate strategic goals/objectives as determined by the board from time to time. This is consistent with the essential function of a nomination committee and is necessary to build and maintain an effective board.

As to Question 35 and Question 36, we AGREE with the proposal to upgrade RBP A.4.6 to a CP, to state that issuers should make the terms of reference available.

- The terms of reference of the nomination committee constitutes essential information about the issuer that should be transparent to market.
- It is appropriate to make the written terms of reference available on the HKEx website as well as the issuer's website. The HKEx website is an appropriate central repository for such information.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

As to Question 37 and Question 38, we AGREE with the proposal to upgrade RBP A.4.7 to a CP, to state that issuers should make available sufficient resources to the nomination committee.

- We hold the view that it is essential for the board and its committees to have sufficient resources to perform their functions. The nomination committee should have access to independent professional advice at issuer's expense.
- We also maintain the view that such authority should be used sparingly, in situations where there is real conflict or some other genuine need. The issuer's management should find it in the issuer's best interest to provide or procure pertinent information and useful assistance to the board and its committees.

Board committees – corporate governance committee
Question 39-45

As to Question 39, we AGREE with the proposal to add a CP on the duties of a "corporate governance committee" as set out in Consultation Paper paragraph 141, and we further AGREE with the proposed terms of reference.

- We hold the view that it is fundamental to good corporate governance practices for a board to devise a suitable mechanism to perform the duties of a "corporate governance committee" as set out in Consultation Paper paragraph 141. We do note that it is ultimately the full board that is responsible for the issuer's corporate governance.
- We think Consultation paragraph 141 covers the essential areas. Issuers can further tailor the terms of reference in manners not inconsistent with the principles set out therein to meet their specific needs.

As to Question 40 and Question 41, we AGREE that the committee(s) performing the duties and function of a "corporate governance committee" should submit to the board a written report on its work annually, and that the report be published as part of the issuer's corporate governance report.

- The activities of board committees should be made known to and integrated into the works of the full board. The full board is ultimately responsible for corporate governance.
- A written report is a good medium for transmitting information and reporting to the whole board, but it is essential that this is not done as a perfunctory matter.
- An issuer's corporate governance practices constitute essential information that should be transparent to the market. The corporate governance report is a suitable medium for making such information available to stakeholders.

As to Question 42, we support introducing an RBP stating that an issuer should establish a separate corporate governance committee.

- See our response to Question 43.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

As to Question 43, we AGREE the duties of an existing committee or committees can be expanded to include those of a "corporate governance committee" as described in Consultation Paper paragraph 141.

- The substance of the role and functions of a corporate governance committee being properly performed is more essential than the mere existence of a "corporate governance committee".
- So long as the issuer has an appropriate board size to establish a corporate governance committee, it is a preferred approach.
- We recognise that some issuers may not have an appropriate board size that could make for a separate committee.

As to Question 44, we AGREE that the committee(s) performing the duties of a "corporate governance committee" should comprise a majority of INEDs.

- A majority INED provides a suitable and desirable counterweight to the possibility of undue influence of executive directors and the management generally.
- There is strong argument for the chairman of such committee(s) performing the duties of a "corporate governance committee" to be an INED.

As to Question 45, we DISAGREE with the proposal to add a Note to CP D.3.2 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.

- A board will likely find that it is beneficial to have members serving on the "corporate governance committee" to be someone who have good knowledge of the day-to-day operations of the issuer. But we do not think it is necessary to add the Note.
- Even without the Note, the committee(s) performing the function of a "corporate governance committee" can always recruit or otherwise arrange for the help of suitable executive directors or management personnel in discharging its functions.

Board committees – audit committee – "whistleblowing" policy
Question 46; Question 48

As to Question 46, we AGREE with the proposal to upgrade RBP C.3.7 to a CP to state that issuers should include in audit committee's terms of reference arrangements for employees to raise concerns about improprieties in financial reporting.

- We agree it is important for employees to be able to raise an alarm on financial reporting, internal control and other matters. We note, however, that it is equally important for a board to put in place policy and procedures to evaluate complaints and to judiciously decide which complaints truly warrant further actions.

As to Question 48, we support the introduction of a new RBP to encourage audit committees to establish a whistle-blowing policy.

- We agree the audit committee is the appropriate committee to be responsible for an issuer's whistle-blowing policy.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- We think the establishment of a whistle-blowing policy should be a CP, not just an RBP. If we are to place value on whether an issuer has put in place arrangements for employees to raise concerns about improprieties in financial reporting, internal control and other matters, we should also take the next logical step of preventing the issuer to take retaliatory actions against a whistleblower who is an employee. A well-devised whistle-blowing policy is necessary for employee protection.

Board committees – audit committee – interactions with external auditors
Question 47

As to Question 47, we support the proposal to amend CP 3.3(e)(i) to state that the audit committee should meet with the external auditor "at least twice a year".

- We note the wording is "at least twice a year". The audit committee should not hesitate to meet with external auditors more frequently and as necessary if in their judgment the circumstances would warrant more frequent interactions.

Remuneration of directors, CEO and senior management - disclosure
Questions 49-51

As to Question 49, we AGREE with the proposal that issuers should disclose senior management remuneration by band.

- Shareholders have reason to be sure that company resources are not expended to reward non-performing executives. The proposal merely calls for disclosure of such information by band.
- We note that RBP B.1.7 will be retained.
- The inclusion of those persons whose biographical details are disclosed under the Rules (Appendix 16, paragraph 12) is appropriate.

As to Question 50, we AGREE that senior management remuneration disclosure should include sales commission.

- The source nature of remuneration to senior management may be as important to the total quantum, as such could have undue influence on the motivation of business decisions made by senior management.

As to Question 51, we AGREE with the proposal to amend Appendix 16 to require an issuer to disclose the CEO's remuneration in its annual report and by name.

- It can be said that the most important task of a board is to recruit and evaluate the CEO.
- In addition to remuneration for services, we note that attention must be paid to severance arrangements and benefits payable upon termination of the CEO's employment.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

Remuneration of directors, CEO and senior management – "performance-linked"
Question 52

As to Question 52, we AGREE with the proposal to upgrade RBP B.1.6 to a CP, to state that a significant proportion of executive director's remuneration should be structured so as to link rewards to corporate and individual performance.

- Executive compensation should align with long-term performance of the corporation and shareholder value. An issuer's board (and its remuneration committee) will want to link at least some portion of executive compensation to well-conceived measures of performance with reference to the board's corporate goals and objectives.
- See also our response to Question 29.

Board evaluation
Question 53

As to Question 53, we support the proposal to add a new RBP B.1.8 that an issuer's board should conduct a regular evaluation of its own performance and individual directors' performance.

- There is a strong case to make it a CP. HKIoD generally supports the notion of board and director self-evaluation. See, e.g., HKIoD Code of Conduct.
- Self-assessment of performance by individual directors encourages a reflection on their role and contribution in the board and how to improve. Board (and committee) self-evaluation encourages a reflection on how well the board (and its committees) is performing and what changes and adjustments might be prudent. We hold the view that director and board self-evaluation will enable better corporate governance that in turn will result in better corporate performance for shareholders.
- We are aware of different approaches to conduct self-evaluations, and we hold the view that boards should have the leeway in determining how they conduct their own.
- See also our response to Question 29.

Board meetings – physical meetings versus written resolutions
Question 54-55

As to Question 54, on the need to retain the wording that issuers should hold a board meeting to discuss resolutions on a material matter where a substantial shareholder or a director has a conflict of interest, we have the following comments.

- Though not as satisfying as in-person meetings, attendance by electronic means will still enable directors to have a proper discussion of the matters. Retaining the wording should not create too heavy a burden on issuers. See also our response to Question 55.
- It seems prejudicial to assume that directors would not pay attention to a matter if they are considering it on paper rather than at a meeting. HKIoD holds the view that all directors should conscientiously study board papers, whether they are for a physical meeting or for written resolutions, and should ask for more information or explication in order to reach informed decisions.
- Provided there is no change to the critical underlying circumstances, routine connected transactions and other matters that involve some aspects of "conflict" that

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

are already well-known to the board directors might not amount to something that could not be presented for decision by way of well-drafted written board resolutions and accompanying papers circulated in advance.

As to Question 55, we AGREE with adding a Note to the relevant CP stating that attendance at board meetings can be achieved by telephonic or video conferencing.

- Where appropriate, we encourage company boards and committees to make use of advanced technology to hold meetings or to facilitate communications. It may be worthwhile to emphasize that attendance by electronic means should only include such communication modes wherein each participant can hear each other. Telephonic or video conferencing should meet that requirement.

Board meetings - Directors attendance at board meetings
Question 56-58

As to Question 56, we AGREE as to the two new Notes, that only attendance in person or attendance by electronic means should counted as attendance, and that the attendance of a director appointed part way during a financial year should be stated by reference to the number of board meetings held during his tenure.

- As to the first proposed Note, HKIoD holds the view that performance of director's role is a personal performance.
- As to the second proposed Note, stating the attendance during the tenure of a director appointed part way is the only way to make the reporting accurate and not misleading. The disclosure should enable readers to easily discern the context and meaning of any director's attendance record.

As to Question 57, we AGREE that attendance by an alternate should not count as attendance by the director himself.

- HKIoD holds the view that performance of director's role is a personal performance.

As to Question 58, we AGREE with the proposal that an issuer discloses directors' attendance with sufficient levels of details to indicate whether it is a personal attendance or by alternate.

- The disclosure should enable readers to easily discern the context and meaning of any director's attendance record.

Board meetings – 5% threshold for interested director
Question 59

As to Question 59, we AGREE with the proposal to revise Rule 13.44 to remove the 5% exemption described in Consultation Paper paragraph 199.

- HKIoD believes a director should not vote on any matter in which he has a personal interest.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

Chairman and Chief Executive Officer – Division of responsibilities
Questions 60-61

As to Question 60, we AGREE with the proposal to remove the words "at the board level" from Code Principle A.2.

- The wording "at the board level" is not necessary to convey the underlying principle regarding the role and function of board to manage board matters versus the day-to-day management of the business, which should be the domain of an issuer's management.

As to Question 61, we AGREE with the proposal to amend CP A.2.3 to add "accurate" and "clear" in addition to "adequate, complete and reliable" to describe the information that the chairman should ensure directors receive.

- NEDs will have that much more a difficult task to discharge their duties if they don't have good information to rest their decisions on.

Chairman and Chief Executive Officer – Chairman's responsibilities
Questions 62- 67

As to Question 62, we support the proposal to upgrade RBP A.2.4 to a CP to put 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.

- This is consistent with our view on the role of the board chairman. See HKIoD Guidelines for Directors, para 79.
- HKIoD believes there can be strong merits in separating the role of the issuer's chief executive officer and the board chairman. We subscribe to the general notion of a clear division between the responsibilities of board management and that of day-to-day management of an issuer's business. A separate board chairman creates a counterweight to what could be overwhelming influence of the executive management over board matters, and thereby positions the board better to exercise its key monitoring and oversight functions.

As to Question 63, we support with the proposal to upgrade RBP A.2.5 to a CP and to add "primary" to the existing wording to state that "[t]he chairman should take ^primary^ responsibility for ensuring that good corporate governance practices and procedures are established".

- Good corporate governance is the collective responsibility of the whole board, and all directors have equal responsibilities. However, the board chairman has a leadership role in board matters. See HKIoD Guidelines for Directors, para 79. See also our response to Question 62.

As to Question 64, we AGREE with the proposal to upgrade RBP A.2.6 to a CP to emphasize the chairman's responsibility to encourage directors with different views to voice their concerns, allow sufficient time for discussion of issue and to build consensus.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- This is consistent with our view on the role of the board chairman. When the board chairman takes the chair at meetings to ensure orderly conduct, the board chairman is also to ensure that everyone who should have a say does have a say of an appropriate length. See HKIoD Guidelines for Directors, para 79.
- Directors should have the courage to act and not be afraid to voice their concerns. The board room atmosphere must also be one that is conducive to such rigorous discussions.

As to Question 65, we AGREE with the proposal to upgrade RBP A.2.7 to a CP and to state that the Chairman should hold separate meetings with only INEDs and only NEDs at least once a year.

- Separate meetings without the presence of EDs could allow NEDs (and INEDs) to speak more freely to express concerns.
- Directors should act in the interest of shareholders as a whole, but to the extent that NEDs represent particular shareholder interests, separate meetings could allow those perspectives to be explored at greater depth, in order for those perspectives to be more properly assessed in the whole context of company and shareholder interest.

As to Question 66, we AGREE with the 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.

- This is consistent with our view on the role of the board chairman. The board chairman is the "spokesperson" for the entire board. See HKIoD Guidelines for Directors, para 79.

As to Question 67, we AGREE with the proposal to upgrade RBP A.2.9 to a CP to emphasize the Chairman's role to enable NED contributions and constructive relations between EDs and NEDs.

- This is consistent with the role of a board chairman. See HKIoD Guidelines for Directors, para 79. See also our response to Question 65.

Notifying directorship change and disclosure of directors' information
Question 68

As to Question 68, we AGREE with the proposal to amend Rule 13.51(2) to require issuers to disclose "retirement" and "removal" of a director or supervisor, in addition to instances of "appointment", "resignation" and "re-designation".

- We are of the view that the retirement or removal of a director or supervisor constitutes essential information about the issuer that should be transparent to the market.

As to Question 69, we AGREE with the proposal to 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).

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- We are of the view that the appointment, resignation, re-designation, retirement or removal of a CEO constitutes essential information about the issuer that should be transparent to the market.

As to Question 70, we AGREE with the proposal to amend Rule 13.51(2)(o) to cover all civil judgments of fraud, breach of duty or other misconduct involving dishonesty.

- Shareholders have reason to be sure that the directors of the companies they invest in are and remain persons of honesty and integrity.

As to Question 71, we AGREE with the proposal to 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).

- There is a need to avoid the loophole described in paragraph 229. An issuer in the situation of Issuer A in the example of that paragraph should not be able to misinterpret the rule and fail to make an announcement about a public censure of one of its directors, even when that censure is a result of that director's involvement with another issuer.
- See also our response to Question 70.

As to Question 72 and Question 73, we AGREE with the proposal to upgrade RBP A.3.3 to a CP to ensure that directors' information is published on an issuer's website, and to amend it to state that the directors' information should also be published on the HKEx website.

- Such information is essential information that should be transparent to the market.
- The HKEx website is an appropriate central repository for such information.

Providing management accounts or management updates to the board
Question 74

As to Question 74, we support the proposal to add a CP stating that issuers should provide board members with monthly updates as described in Consultation Paper paragraph 240, but we have the following comments.

- With better information from the issuer (in the form of monthly updates or otherwise), directors will have better means to perform their monitor and oversight functions.
- An issuer should provide information to enable the board to make timely and informed decisions. But if such information (or the necessary level of detail) is not forthcoming, the directors should take the initiative to ask for relevant information. Directors have duty to make inquiries based on the information given, and ask for further explications if necessary.
- The board together with management should determine the nature and scope of information the board should receive. Such could include not only financial information and key ratios indicating results of operations, industry trends, and other business market information of or relating to the issuer.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

Next Day Disclosure for a director exercising an option
Question 75-76

As to Question 75, we DISAGREE with the proposal to remove the need to publish a Next Day Disclosure Return following the exercise of options for shares in the issuer by a director of a subsidiary.

- The information should be transparent to the market. There is a time lag to wait for the Monthly Returns.
- An alternative may be to permit the return to be published within a few business days after the exercise.

As to Question 76, we DISAGREE with the proposal to require issuers to publish a Next Day Disclosure only if options exercised 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.

- The information should be transparent to the market. There is a time lag to wait for the Monthly Returns.
- An alternative may be to permit the return to be published within a few business days after the exercise.

Disclosing long term basis on which an issuer generates or preserves business value
Question 77

As to Question 77, we AGREE with the proposal to introduce the proposed CP C.1.4 as described in Consultation Paper paragraph 250, that directors should include in the issuer's annual report an explanation of the basis on which the company generates or preserves value over the long term (the business model) and the strategy for delivering the objectives of the company (corporate strategy).

- It is appropriate for directors to include such explanation in the issuer's annual report. The board has an important advisory role in shaping and deciding on corporate strategy to enhance shareholder value and an important monitoring role to review performance and progress towards achieving such strategy.

Directors' insurance
Questions 78-79

As to Question 78, we AGREE with the proposal to upgrade to a CP to state that issuers should arrange appropriate insurance for directors.

- HKIoD has long advocated that, while directors must act with diligence to discharge duties, they must also be properly shielded from liability.
- While issuers should arrange the insurance for directors, the board should have key authority in determining the scope and level of coverage.

As to Question 79, on the proposal to add the words "adequate and general", we have the following comments.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- Our concern is with the wording "general". In the context of an issuer's bankruptcy, proceeds from a "general" D&O insurance policy could be claimed by debtors thus preventing such proceeds from being paid out to directors and officers. HKIoD believes all directors (and officers) should have "supplemental" coverage that covers only directors and officers.
- We also believe that the terms of the insurance coverage should be reviewed on a regular basis and no less than once per year, in order to better match the changing scale and type of the issuer's business activities and the associated risks they bring.

PART II: SHAREHOLDERS
Shareholders' general meetings
Notice of meeting and bundling of resolutions
Question 80

As to Question 80, we AGREE with the 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.

- Issuers should give proper information not only to directors but also to shareholders. Directors should ensure that shareholders have proper information. This is consistent with the values embodied in the HKIoD Code of Conduct.
- For good commercial reasons, resolutions are often interdependent and linked so as to form one significant proposal. Where resolutions are so "bundled", it is more essential for shareholders to understand the implications.

Voting by poll
Questions 81-84

As to Question 81 and Question 82, we support the proposal to amend Rule 13.39(4) to allow the chairman at a general meeting to exempt procedural and administrative matters described in paragraph 274 from voting by poll, but we have the following comments.

- The proposal attempts to define what would constitute "procedural and administrative matters", and some obvious examples are given (see Consultation Paper paragraphs 274 and 275). But the concern that an issuer may by mistake – worse, with intent – classify a matter to achieve a desired outcome remains. For example, taking a very stiff view as to what constitute "deliberate irrelevant and repetitive questions from the floor" in order to force closure of what might be legitimate enquiries from shareholders can still result in a lot of shareholder dissatisfaction. A vote by poll does not automatically redress that dissatisfaction, especially when the shareholders raising the enquiries are in the minority.
- More guidance will be necessary and helpful. We note that the Exchange plans to provide further guidance in Frequently Asked Questions to be published on implementation.

As to Question 83, we AGREE with the proposed amendments to Rule 13.39(5) to clarify disclosure in poll results.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- We note that the amendments are to clarify the Rule rather than to change its intention. We consider the details that will be required by the amended Rule constitute essential information that should be transparent to the market.

As to Question 84, we AGREE with the proposal to amend CP E.2.1 to remove the wording "at the commencement of the meeting".

- There is no reason to restrict the timing of giving the explanation to the start of the meeting. There should be flexibility. We agree it may be more appropriate for the chairman at the general meeting to explain the polling procedures at a different time, say, right before voting.

Shareholders' approval to appoint and remove an auditor
Questions 85-87

As to Question 85, we DISAGREE with that aspect of the new Rule 13.88 that would always require shareholder approval to appoint the issuer's auditor.

- To the extent permitted under the issuer's constitutional documents and the laws of its jurisdiction of incorporation, the issuer's board should retain the flexibility to appoint auditors to fill a casual vacancy resulting from the resignation of its auditor. Typically, the auditor appointed by the board to fill casual vacancy will hold office until the conclusion of the issuer's next annual general meeting, and if eligible the auditor can offer themselves for re-appointment then.
- Hong Kong company law permits board appointment to fill casual vacancy resulting from the resignation of auditors. There is no need for the Listing Rules to be more restrictive than Hong Kong company law in this aspect.

As to Question 86, we AGREE with the proposal to add a requirement for shareholder approval to remove the issuer's auditor before the end of his term of office.

- This should be no more burdensome than what Hong Kong law would require from a Hong Kong company. The Exchange may want to clarify that the new Rule contemplates an ordinary resolution to be passed by all shareholders.

As to Question 87, we AGREE with the proposal to require a circular for the removal of the auditor to shareholders.

- Akin to the requirements of Rule 13.51(4), the circular for removal of auditor (and that for appointment as well) should specify whether or not the outgoing auditor wishes to draw any matters to the attention of shareholders.

Directors' attendance at meetings
Questions 88-91

As to Question 88 and Question 89, we AGREE with the proposal to upgrade to a CP stating that NEDs (including INEDs) should actively participate in board/committee meetings and general meetings, and contribute to the development of the issuer's strategies and policies.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- This is consistent with the values embodied in the HKIoD Code of Conduct.
- Developing and deciding on an issuer's strategies and policies is the essential function of the board of directors.

As to Question 90, we AGREE with the proposal to add a new mandatory disclosure requirement in the corporate governance report that issuers must disclose details of attendance at general meetings of each director by name.

- This should not be a heavy burden on an issuer or its directors.

As to Question 91, we AGREE with the proposal to amend CP E.1.2 to add reference to "any other committees".

- The proposed amendment merely elaborates on the notion that the board chairman should arrange for the chair of all committees to be available to answer questions at shareholders' meetings. This is consistent with the role and responsibilities of a board chairman. For this purpose, there should be no distinction among the various committees.
- We hold the view that all directors should endeavour to attend and participate in general meetings.

Auditor's attendance at annual general meetings
Question 92

As to Question 92, we AGREE with the proposal to include a statement in CP E.1.2 concerning auditor's attendance at annual general meetings.

- We hold the view that auditors should be present at annual general meetings.
- Exchange should clarify whether this is to be "management's" or "board chairman's" duty to make the arrangement.

Shareholders' rights
Question 93

As to Question 93, we AGREE with the proposal to upgrade to mandatory disclosure of shareholder rights under paragraph 3(b) of Appendix 23 (namely, shareholders' rights on convening extraordinary general meeting; on putting enquiries to the board; and on putting forward proposals at shareholders' meetings).

- Such information constitutes essential information about the issuer that should be transparent to shareholders.

Establishing a communication policy
Question 94

As to Question 94, we AGREE with the proposal to add a new CP stating that issuers should establish a shareholder communication policy that is regularly reviewed by the board to ensure its effectiveness.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- HKIoD believes that a board should ensure that shareholders (and other stakeholders) be given information on the company. See HKIoD Code of Conduct article 7.

Publishing constitutional documents
Questions 95; Question 97

As to Question 95, we support the proposal to add a new Rule requiring issuers to publish an updated and consolidated version of their M&A or constitutional documents and the HKEx website, but we have the following comments.

- A consolidated version is most convenient to users for purpose of ascertaining the current operative rules. However, the changes to the constitutional rules from one time to another can also be useful information to investors and other stakeholders to assess corporate governance aspects of the issuer. We suggest that the consolidated version of the constitutional documents should be one that has appropriate annotations of changes or amendments made since the original adoption. See also our response to Question 97.

As to Question 97, we support the proposal to upgrade to mandatory disclosure of significant changes to issuer's constitutional documents, but we have the following comments.

- The corporate governance report is an appropriate medium for issuers to disclose significant changes to constitutional documents.
- As a drafting matter, we think the re-numbered paragraph P(a) of Appendix 14 should refer to "constitutional documents", not just "articles of association".

Publishing procedures for election of directors
Question 96

As to Question 96, we support adding a new Rule to require issuers to publish on its website the procedures for shareholders to propose a person for election as a director, but we have the following comments.

- HKIoD believes that shareholders should have proper disclosure of information.
- To the extent such procedures are set out in constitutional documents, the effect of the new rule could merely be to require issuers to make the information more prominent. That should not be a heavy burden on issuers.
- The nomination committee should evaluate the suitability of all candidates, whether ones they identify or ones proposed by shareholders, with the same criteria and purpose: to select board candidates with the right mix of talent and experience who can best serve the interest of the issuer and its shareholders as a whole.

PART III: COMPANY SECRETARY
Company Secretary's qualifications, experience and training
Questions 98-104

As to Question 98, we AGREE with the proposal to introduce a new Rule 3.28 and to move the company secretary's qualifications and experience requirements from the existing Rule 8.17 to the new Rule. We further AGREE with the scheme of the new Rule to emphasize the

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

two requirements of "academic or professional qualifications" and "relevant experience", with a Note to further explain what the Exchange will accept or will consider when assessing those qualities.

- Chapter 3 is an appropriate place and a better place to house the rules on company secretary.

As to Question 99, we AGREE that the Exchange should consider as acceptable the list of qualifications for company secretaries set out in Consultation Paper paragraph 345.

- We believe those are appropriate academic and professional qualifications to be considered acceptable.

As to Question 100, we AGREE that the Exchange should consider the list of items set out in Consultation Paper paragraph 346 when deciding whether a person has the relevant experience to perform company secretary functions.

- The Rules should make clear that qualifications and experience outside of Hong Kong are acceptable.
- The right mix of qualifications and experience even if such is earned and accrued outside of Hong Kong can make a person more suitable and competent to perform company secretary functions than someone who just happen to meet some of the qualifications set out in Consultation Paper paragraph 345.

As to Question 101, we AGREE with the proposal to remove the requirement for company secretaries to be ordinarily resident in Hong Kong.

- The focus should be on competence to perform the functions, not on whether the company secretary is an ordinary resident of Hong Kong.

As to Question 102, we AGREE with the proposal to repeal Rule 19A.16

- With the changes associated with the new Rule 3.28, there should be no need to retain Rule 19A.16 to cater to Mainland issuers.

As to Question 103, we AGREE with the proposal to add Rule 3.29 requiring company secretaries to attend 15 hours of professional training per financial year.

- Company secretaries should have up-to-date skills and knowledge to discharge their role and responsibilities.

As to Question 104, we have the following comments.

- The proposed transitional arrangement essentially allows those who have been company secretaries the longest to defer training the most. This does not jive with the observation made in Consultation Paper paragraph 340, that "[corporate governance] standards, which can be complex, change frequently and should be tailored to an issuer's circumstances."

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- An alternative may be to require (or encourage) company secretaries in the various categories under the implementation timetable described in Consultation Paper paragraph 350 to participate in learning activities to satisfy certain "transitional" training requirements not to the fullest extent as required by the proposed Rule 3.29.

New section in Code on company secretary
Questions 105-112

As to Question 105 and Question 106, we AGREE with the proposal to include a new section of the Code on company secretary, and we AGREE with the proposed principle as described in Consultation Paper paragraph 362 (and 352).

- This will better define the role and responsibilities of the company secretary.

As to Question 107, we support the 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.

- There is good reason to believe that an employee company secretary is more likely to be familiar with the day-to-day affairs of the issuer.
- However, depending on the actual circumstances (e.g., nature and scale of the issuer's business, the geographic spread of the issuer's executive and management personnel, etc.) being an employee of an issuer may give the employee company secretary no real significant advantage in the level of knowledge of day-to-day affairs of the issuer.
- We note that the proposed CP F.1.1 does not prohibit issuers from engaging external service providers to perform the company secretary function.

As to Question 108, we AGREE with the proposal described in Consultation Paper paragraph 364, that if an issuer employs an external service provider, it should disclose the identity of the contact person at the issuer.

- This is appropriate.

As to Question 109, we AGREE with the proposed CP F.1.2 that the selection, appointment or dismissal of the company's secretary should be the subject of a board decision.

- There is a strong argument to make it a Rule rather than a CP. The board is ultimately responsible for corporate governance matters.

As to Question 110, we have the following comments.

- Some instance of a physical board meeting to make a final decision is desirable, but certain aspects of the recruitment or dismissal process could in fact be dealt with more efficiently dealt with by written resolutions.

As to Question 111, we have the following comments.

- The company secretary should report to "^both^ the board chairman ^and^ the chief executive officer", not "board chairman *and/or* the chief executive officer" as currently worded in the proposed CP F.1.3.

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

- If the issuer has a combined Chairman/CEO, there is reason to consider having the company secretary maintain close contact with an INED.

As to Question 112, we support the proposal to add CP F.1.5 stating that the company secretary should maintain a record of directors training.

- The company secretary is in a good position to keep and maintain a central record for the issuer.
- We also hold the view that directors should also maintain their own personal record.

CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS
Definition of "Announcement" and "announce"
Question 113

As to Question 113, we AGREE with the proposal to include a definition in the Rules for the terms "announcement" and "announce" as described in paragraph 371.

- This will clarify the issue.

Authorized Representatives' contact details
Question 114

As to Question 114, we AGREE with the proposal to amend Rule 3.06(1) to add reference to an authorized representative's contact details beyond mobile number to include other modes of communication.

- It is essential for the Exchange to be able to contact authorized representative and it will ultimately be beneficial to issuers if the Exchange knows how best to reach the authorized representatives.

Merging corporate governance report requirements into Appendix 14
Questions 115-116

As to Question 115 and Question 116, we AGREE with the proposal to merge Appendix 23 into Appendix 14, to make the substantive and consequential changes as described in Consultation Paper paragraphs 380 and 381.

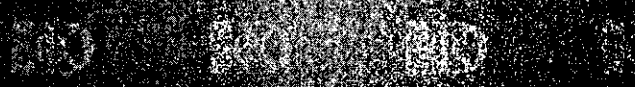
- We think this will enable readers to better understand the requirements.

-END-

香港德輔道中 19 號環球大廈 1008 ● 1008 World-wide House, 19 Des Voeux Road Central, Hong Kong
電話 Tel: (852) 2889 9986 傳真 Fax: (852) 2889 9982 電郵 E-mail: executive@hkiod.com 網頁 Web-site: www.hkiod.com

董事

THE HKIoD CODE OF CONDUCT



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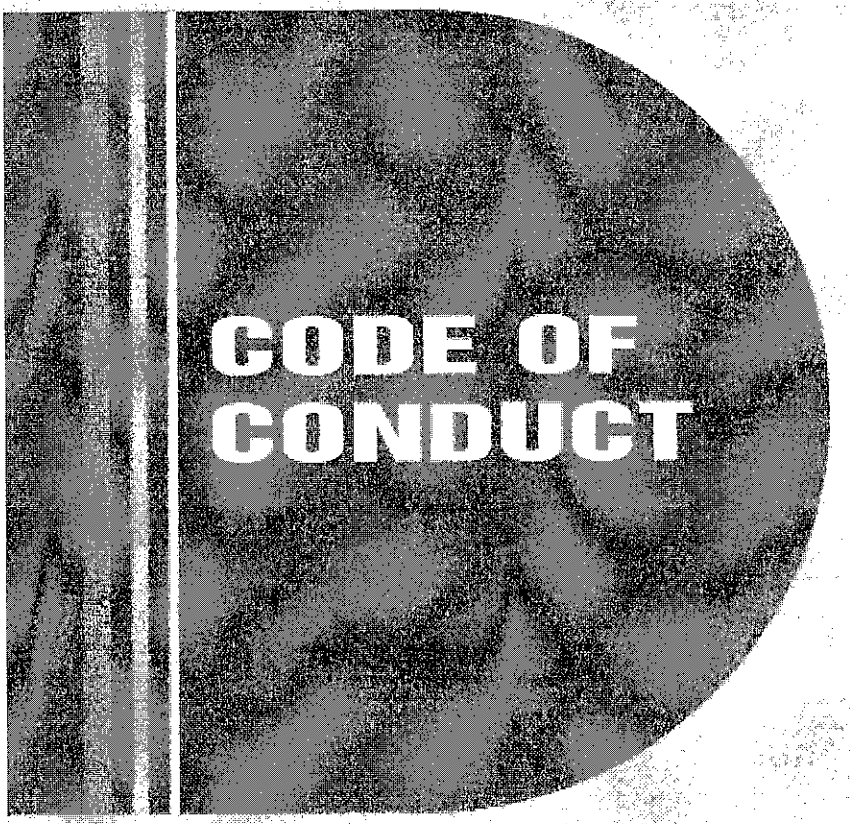

The HKIoD Code of Conduct

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The Hong Kong Institute of Directors

Chinaweal Centre 8/F, 414-424 Jaffe Road,
Causeway Bay, Hong Kong
Tel: (852) 2889 9986
Fax: (852) 2889 9982
E-mail: executive@hkiod.com
Web-site: www.hkiod.com

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PURPOSE

The Hong Kong Institute of Directors ("HKIoD") Code of Conduct ("the Code") has been developed with the following purposes:-

- To facilitate company directors in meeting high standards of professionalism and ethics,
- To provide guidance to directors in practice and
- To lay down the standards that HKIoD expects of its members in fulfilling the roles and responsibilities of directors.

The principles set out in the Code are applicable to:

- Both executive directors and non-executive directors and
- Directors of all organizations, including listed companies, private companies and non-profit-distributing organizations.

While law and regulation prescribe a business framework with basic requirements, the Code is an important element supporting a self-regulatory approach to director practices and the conduct of business. When upheld by all in a group, or indeed the entire society, the Code contributes to the development of a culture of accountability and greater confidence in the group or the society involved. Moreover, the Code also contributes to the enhancement of the image of the group which adopts and embraces it.

ADMINISTRATION

Effective 5 July 2005, Fellows and Members of The Hong Kong Institute of Directors have to be bound by the Code. Associates of the Institute and other directors are encouraged to comply. Should there be cause for complaint, Fellows and Members are subject to review and subsequent disciplinary action, if proven with failure to comply with the principles and spirit contained in the Code.

The Code is subject to revision in order to address issues of importance as they arise and to progress in pace with current trends in corporate governance.

MISSION, VISION AND VALUES: The Code has been developed to synchronize and integrate with the mission, vision and values of HKIoD.

Mission:The Hong Kong Institute of Directors is Hong Kong's premier body representing professional directors working together to promote good corporate governance and to contribute towards advancing the status of Hong Kong, both in China and internationally.

Vision: We are an Institute recognized locally and internationally as an authoritative advocate, influential promoter and dynamic facilitator of excellence in director practices in a multi-cultural environment through education, information, accreditation, value-added service and community integration.

Values: The HKIoD Code of Conduct embraces the values of Becoming Conduct, Honesty, Legality, Diligence, Accountability, Integrity, Justice, Leadership in Enterprise, Participation, Excellence in Contribution, Continuing Professional Development and Discipline.

THE CODE

A member of The Hong Kong Institute of Directors undertakes to uphold the Institute's Code of Conduct in fulfilling the roles and responsibilities as a company director with the following commitment:

1. *Becoming Conduct:* To behave with conduct which becomes a member of the ultimate body that is responsible for corporate governance and hence the prosperity and integrity of the company.

2. *Honesty:* To act in good faith in the best interests of the company, exercising powers for their proper purpose.

3. *Legality:* To act within the legal framework as conferred on directors by the Companies Ordinance, the company's *Memorandum and Articles of Association* and any other relevant documents of authority.

4. *Diligence:* To exercise care, skills and due diligence

5. *Accountability:* To be accountable to the company and its shareholders.

6. *Integrity:* To avoid conflicts of duty and personal interest and to promote ethical director and company conduct.

7. *Justice:* To ensure equality of shareholder opportunity and adequate and proper disclosure of information to relevant parties.

8. *Leadership in Enterprise:* To enhance shareholder value by steering the company through sound strategic directions, proper internal control and alert risk management.

9. *Participation:* To contribute towards a participative board culture as well as enlightened and considered decision-making processes.

10. *Excellence in Contribution:* To engage in self-assessment of work performance from time to time so as to align with the goals of the company and enhance personal and board contribution towards the company.

11. *CPD:* To pursue continuing professional development programmes for directors so as to master up-to-date knowledge, skills and best director practices.

12. *Discipline:* To be subject to review by a disciplinary panel and an appeal panel, if necessary, set up by The Hong Kong Institute of Directors, should any cause for complaint call for such a review.

GUIDELINES

The guidelines are explanatory notes aiming to assist members in complying with the Code. They are not meant to be exhaustive and similar to the Code, are subject to review and revision. In the guidelines, words in singular purports plural as well and references in masculine gender cover both genders.

1. Becoming Conduct: To behave with conduct which becomes a member of the ultimate body that is responsible for corporate governance and hence the prosperity and integrity of the company.

A director should recognize that the board is the ultimate body responsible for corporate governance and hence the prosperity and integrity of the company. As a member of the board, a director has individual and collective responsibility in leading the company.

Each director should make his best endeavours to ensure that the board fulfills its key role of safeguarding and improving the company's prosperity. At the same time, a director should ensure that such processes are executed in a proper approach.

When acting on behalf of the board, a director should carry dignity and grace.

2. Honesty: To act in good faith in the best interests of the company, exercising powers for their proper purpose.

A director owes his responsibility to the company and should therefore have the best interests of the

company in mind. When executing the powers entrusted upon him, a director should ensure that the purpose has been specified clearly and is properly understood.

A director must acquire a broad knowledge about the business of the company and the statutory and regulatory requirements affecting company direction. Moreover, a director should have full understanding of the vision, mission, values and strategic plans of the company. A director must make the initiative to ask for relevant information although the onus to supply the information is on the company.

In the exercise of his responsibilities, a director must be prepared and have the courage to express disagreement, if necessary, with other board members, including the chairman or the CEO. When a director concludes that he cannot acquiesce in a decision of the board, he must pronounce this status and may ask for additional legal, accounting or other professional advice.

3. Legality: To act within the legal framework as conferred on directors by the *Companies Ordinance*, the company's *Memorandum and Articles of Association* and any other relevant documents of authority.

A director should at all times comply with the law, regulation and relevant codes. A director should also endeavour to ensure that the company complies with the law, regulation and relevant codes.

A director should have a general understanding of the stipulation of the *Companies Ordinance* and a careful perusal of the company's *Memorandum and*

Articles of Association. In the case of a listed company or a regulated business, a director should have understanding of the *Listing Rules* and the accompanying *Code* and other relevant Ordinances where applicable.

4. Diligence: To exercise care, skills and due diligence.

In return for the trust bestowed on him by shareholders, a director should be diligent in discharging his duties to the company. A director must strive to attend all meetings of the board and the committee(s) of the board that he is a member of.

A director should give all board papers conscientious scrutiny and endeavour to understand the contents in order to actively participate in board discussions. In approaching board matters, a director must exercise care, examining options and various perspectives. In all assessments of board matters, a director should apply his personal skills.

5. Accountability: To be accountable to the company and its shareholders.

A director is accountable primarily to the company. Each director should endeavour to ensure that the company is financially viable, properly managed and constantly improved.

A director should seek to understand the expectations of shareholders and endeavour to fulfill them when deciding upon the best interests of the company.

In evaluating the interests of the company, a director should take into account the interests of the

shareholders as a whole, but where appropriate should take into account the interests of other stakeholders, ie all individuals and groups which the board judges to have a legitimate interest in the achievement of company objectives and the way in which these objectives are achieved. A director should help the board to promote goodwill with stakeholders.

6. Integrity: To avoid conflicts of duty and personal interest and to promote ethical director and company conduct.

A director must not take improper advantage of his position as director for personal gains.

A director should avoid conflicts of interest. The personal interests of a director and those of associated persons must not take precedence over interests of a company. Full and prior disclosure of any conflict or potential conflict must be made to the board. In the case of an actual or potential conflict, a director must refrain from participating in the discussions and voting on that matter.

A director should not divulge confidential information made available in the course of performing his duties as a director, unless that disclosure is required by law and has been properly authorized.

A director should endeavour to ensure that the company is engaged in ethical conduct and discharge of corporate social responsibilities. A director must evaluate the impact of the company's action in a broad social context, paying special attention to the environment, occupational health and safety, employee relations, equal opportunities, anti-corruption policies, personal data protection, fair competition, consumer rights and other societal issues.

7. Justice: To ensure equality of shareholder opportunity and adequate and proper disclosure of information to relevant parties.

A director should seek to ensure that all shareholders or all classes of shareholders are treated fairly according to their relative rights.

A director should endeavour to ensure that the board conducts proper communication with shareholders on the general strategies of the company and to assist to ensure proper disclosure of information to shareholders, regulators and other stakeholders where relevant.

8. Leadership in Enterprise: To enhance shareholder value by steering the company through sound strategic directions, proper internal control and alert risk management.

A director should endeavour to ensure that the board is properly constituted, structured and managed in fulfilling its roles, so as to ultimately enhance shareholder value.

A director should assist his board in establishing vision, mission, values, strategic plans and goals and targets for the company, delegating appropriately to management and motivating and monitoring management in the meeting of goals and targets.

In the strategic plans, a director should endeavour to ensure that the board exercises creativity and versatility in developing business and creating wealth for the company.

A director should endeavour to ensure that the board puts in place proper checks and balances and audit

control, at the same time making sure that there is open access between the board and the auditors.

A director should at all times be alert to risk management of the company.

9. **Participation: To contribute towards a participative board culture as well as enlightened and considered decision-making processes.**

A director should take a conscientious and active part in the board.

A director should attempt to communicate with colleagues on the board by conveying clearly his deliberations and listening objectively to other board members. In order to contribute towards quality discussions, a director should endeavour to give thorough thoughts to the subject matter, to produce independent analyses and to develop innovative ideas so as to help the board in arriving at wise decisions.

10. **Excellence: To engage in self-assessment of work performance from time to time so as to align with the goals of the company and enhance personal and board contribution towards the company.**

A director should be constantly in pursuit of excellence. In order to do this, a director should engage in self-assessment of work performance from time to time. The assessment should be conducted in conjunction with the role and achievement of the director within the board and how well he contributes in the board towards meeting the goals of the company. The aim is to seek improvement in contribution towards the board and the company.

A director should endeavour to influence the board in the pursuit of self-improvement and excellence.

11. CPD: To pursue continuing professional development programmes for directors so as to remain up-to-date with knowledge, skills and best director practices.

A director should keep abreast of both practical and theoretical developments in direction to ensure that he is equipped with best practices. Every member of HKIoD is obliged to engage in CPD (continuing professional development) through the membership accreditation system of CPD.

12. Discipline: To be subject to review by disciplinary panel and an appeal panel, if necessary, set up by The Hong Kong Institute of Directors, should any cause of complaint call for such a review.

HKIoD members must honour the Code in letter as well as spirit.

If there is any cause for complaint and call for investigation, a member of HKIoD is subject to review by a disciplinary panel set up by The Hong Kong Institute of Directors. If the member is not satisfied with the decision of the disciplinary panel, he may seek hearing by an appeal panel set up by the Institute. Thereafter, he should abide by the final decisions of the appeal panel.

董事

香港董事學會行為守則

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出版人：

香港董事學會
The Hong Kong Institute of Directors

地址：香港銅鑼灣謝菲道414-424號中
國貿商業中心8樓

電話: (852) 2889 9986
傳真: (852) 2889 9982
電郵: executive@hkiod.com
網址: www.hkiod.com

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經諮詢會員後再編訂
香港董事學會理事會核正批準

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目的

香港董事學會（以下簡稱「學會」）制定行為守則（以下簡稱「守則」），目的如下：

- 促進公司董事符合專業操守準則與倫理;
- 提供協助董事常規的指引;
- 列出學會期望會員履行董事職能與責任的標準。

守則內所定立的內容適用於:

- 執行董事及非執行董事;
- 任何組織的董事，包括上市公司,私人公司、非分配利潤組織的董事。

法規制度釐定營業架構及基本要求，而守則卻是支持自我監管董事常規及業務行為的重要元素。具備團體甚至社會認受性的守則有助於發展該團體中甚至社會上的問責文化及加強大眾信心，更因得到集體接受及擁護而有助於鞏固團體形象。

守則的施行

於生效日期2005年7月5日起，香港董事學會全體資深會員及會員均須遵行守則的條件，而學會亦鼓勵附屬會員及其他董事跟隨守則。學會倘接獲任何有關資深會員或會員未能遵從守則原則或精神之投訴，將採取調查，一經確實將須佈相關的紀律處分。

學會於未來將因應重要時論及企業管治發展趨勢而修訂守則內容。

使命、遠見、抱負：守則內容的釐定，配合着學會使命、遠見、抱負等的步伐，並與之一體融合。

使命：香港董事學會為香港代表專業董事的首要組織，其宗旨是鼓勵全體會員齊心推廣優秀公司管治，並為推進香港在中國及國際間的地位作出貢獻。

遠見：學會為本地及國際公認於多元文化環境中培育卓越董事常規，發揮着權威倡導、具影響力推廣、富動力促進等功能，透過提供教育、資訊，評鑒，增值服務、社群融合工作而達成。

抱負：學會守則的內容涵蓋對以下價值觀的擁護：行為得當、真誠視事、合法合例、克勤於務、盡負問責、正直高潔、公正持平、領導創建、積極參與、卓越貢獻、持續進修、遵守紀律。

守則內容

香港董事學會會員承諾，在履行公司董事職能與責任時遵循學會行為守則如下：

1. **行為得當**：作為公司中負責企業管治因而影響公司榮昌及信譽的最高權力單位成員，行為必須配合身份。

2. **真誠視事**：克盡所能，為維護公司的最佳利益，正當地行使權力。

3. **合法合例**：依據公司法、公司組織章程大綱及細則、其他權威性有關文獻所規範行事。

4. **克勤於務**：引用慎思、才略、專注。

5. **肩負問責**：坦然向公司及股東負責。

6. **正直高潔**：避免職責及個人利益上的衝突，並推廣符合倫理的董事及公司行為。

7. **公正持平**：確保股東享有均等機會、有關人士獲得足夠妥當的資訊披露。

8. **領導創建**：透過健全策略方針、適當內部監控、應變風險管理引領公司，達致為股東增值。

9. **積極參與**：投入促進董事會內的參與文化，並協助促進董事會經充分理解和考慮的程序完成決策。

10. **卓越貢獻**：定時自我檢討工作表現，以配合公司目標，並為公司努力增進個人貢獻，以至協助董事會發揮貢獻。

11. **自我提升**：不斷實踐有關董事的持續專業進修，以掌握知識、才略、最佳董事常規，與時並進。

12. **遵守紀律**：如有涉及投訴，將願意接受香港董事學會紀律委員會及上訴委員會的審查與裁決。

指引

以下所提供之註釋指引目的在於協助會員履行守則，請注意指引不能為守則作徹底闡述，亦如守則本身一樣將因應時需而獲檢討及修訂。指引中如引述單數即涵蓋普遍眾數含義、如參照男性即涵蓋普遍兩性含義。

1.行為得當：作為公司中負責企業管治因而影響公司榮昌及信譽的最高權力單位成員，行為必須配合身份。

董事應認同董事會為公司中負責企業管治因而影響公司榮昌及信譽的最高權力單位，作為董事會成員，董事局負有個人及參與集體領導公司的責任。

董事應竭盡所能，確保董事會履行保衛及增進公司榮昌的主要職能，同時董事亦應確保這些程序以正當方式進行。

董事代表董事會行事時應端方自持。

2. 真誠視事：克盡所能，為維護公司的最佳利益，正當地行使權力。

董事需向公司負責，因此應以公司的最佳利益為念。在執行所受的權利重託時，董事應確保旨的已被清晰地說明及理解無誤。

董事對其公司的業務以及影響公司方針的法律與規例須取得廣泛認知，更應深切了解公司的遠見、使命、抱負、策略性計劃。雖然提供資料的責任歸於公司，董事須主動索取有關資訊。

在履行職責時，如有必要，董事須勇於直言，提出與其他董事甚或主席或行政總裁意見相反的異議。當董事結論自己不能認同董事會的決議時，他必須說明立場，並可要求獲取就法律上、會計上、其他專業上的額外意見。

3.合法合例：依據公司法、公司組織章程大綱及細則、其他權威性有關文獻所規範行事。

董事應時刻遵從法律、規例、有關各類守則等行事，並應竭力確保所屬公司也遵從這些律例守則營運。

董事應廣泛認知公司法、又應細讀所屬公司的公司組織章程大綱及細則。如所屬公司為上市公司或受規管公司，董事應了解上市規則、有關守則、有關法例等。

4.克勤於務：引用慎思、才略、專注。

為回報所受信託，董事應殷勤於完成任務，並力求出席董事會及其所參與的董事會屬下委員會全部會議。

董事應認真詳閱董事會文件，並盡力了解其內容，以便積極參與董事會討論。在研究董事會議題時，董事須慎思，更從不同角度審視各種可供選擇的方案。董事於評定董事會議項時應引用個人才略。

5．肩負問責：坦然向公司及股東負責。

董事基本上向公司負責。每位董事應盡力確保所屬公司財政可行、管理恰當、業務不斷地增進。

董事應尋求了解股東期望，然後當決定公司的最佳利益時，竭力符合股東期望。

就評估公司的最佳利益上，董事應考慮全部股東的整體利益，而於適當時候也應考慮其他權益相關者的利益。其他權益相關者即據董事會認為，對達致公司目標的結果及方法都存繫合理利益關係的其他人士或群組。董事應輔助董事會推進其與權益相關者的良好關係。

6.正直高潔：避免職責及個人利益上的衝突，並推廣符合倫理的董事及公司行為。

董事不得濫用其董事地位而謀求私利。

董事應避免利益衝突，不得將其個人及親屬的利益凌駕於公司利益之上。董事須為利益衝突或潛在利益衝突作出事先及全盤申報。在真正或潛在利益衝突的情況下，董事須放棄參與討論有關問題及投票。

董事不應泄露於他擔任董事時所獲取的機密資料，除非經律令下須披露該資料，或已正式地取得批准。

董事應竭力確保公司從事合符道德經營及履行企業社會職責。董事須從整體社會情況評估公司行為的影響，考慮層面包括環境保護、職業健康及安全、僱員關係、平等機會、反貪污政策、個人私隱保障、公平競爭、消費者權益、其它社會論題等。

7.公正持平：確保股東享有均等機會、有關人士獲得足夠妥當的資訊披露。

董事應尋求確保全體股東或全部級別的股東得到公平及因應其相關權利的待遇。

董事應盡力確保董事會作出適當安排，與股東溝通有關公司的概括策略，並協助確保向股東、規管者、其他權益相關者等作出妥當的資訊披露。

8.領導創建：透過健全策略方針、適當內部監控、應變風險管理引領公司，達致為股東增值。

為履行最終給股東增值的職能，董事應竭力確保董事會具備妥善組合、架構、運作功能。

董事應輔助董事會建立遠見、使命、抱負、策略方案、目標及指標等，適當地授權予管理層，並激勵及監察管理層實現目標及指標。

於策略方案上，董事應竭力確保董事會發揮創意理念及應變能力，以便發展業務及為公司創富。

董事應盡力確保董事會建立恰當的檢核與平衡程序以及審計監控，同時確保董事會及審計師接觸無阻。

董事應對公司的風險管理保持警覺。

9.積極參與：投入促進董事會內的參與文化，並協助促進董事會經充分理解和考慮的程序完成決策。

董事應認真及積極地參與董事會。

董事應盡力與董事會同事溝通，清晰地傳遞自己的思考，又客觀地聆聽其他董事的意見。為了投入優質討論，董事應盡量徹底考慮議項、作出獨立分析、發展創新想法，以協助董事會達致明智的決策。

10.卓越貢獻：定時自我檢討工作表現，以配合公司目標，並為公司努力增進個人貢獻以至協助董事會發揮貢獻。

董事應時刻追求卓越。為此，董事應常作自我評估。此評估關連他參與董事會的職能與成績及他對董事會達成公司目標的貢獻若何。評估的目的是尋求增進他對公司及董事會的貢獻。

董事應竭力推動董事會追尋自我提升及卓越表現。

11.自我提升：不斷實踐有關董事的持續專業進修，以掌握知識、才略、最佳董事常規，與時並進。

董事應與時並進，為自己裝備有關董事學實際兼理論發展的最佳常規。每位香港董事學會會員必須實踐會員評鑒制度的持續專業進修。

12.遵守紀律：如有涉及投訴，將願意接受香港董事學會紀律委員會及上訴委員會的審查與裁決。

香港董事學會會員須奉行守則的字義及精神。

如有涉及投訴及需要調查的情況，會員將願意接受由學會成立的紀律委員會審查。如會員不滿紀律委員會的決定，他可以尋求學會成立的上訴委員會聽證，此後他應接受上訴委員會的最終決定。

香港董事學會
The Hong Kong Institute of Directors

Summary of Guidelines for HKIoD Membership Accreditation Through CPD
Effective year 1Jan-31 Dec 2011 For Guidelines & Form: http://www.hkiod.com/accreditation.html

Membership Grades Applicable: Fellows and Members of HKIoD (FHKIoD and MHKIoD)

Mandatory Minimum Total CPD Hours:-
10 hours per annum with at least **1 hour** obtained from Category 1 CPD Activities, or
12 hours per annum if all hours are derived from Category 2 CPD Activities.
Recommended Best Practice:-
20 hours per annum, with award for achieving or exceeding this time upon CPD Validation.
Notes:-
Category 1 refers to CPD activities organised by or related to HKIoD.
Category 2 refers to CPD activities organised by or related to other bodies.

Declaration of Fulfillment is made by all members, upon renewal of membership, by filing with HKIoD the **Membership Renewal Statement**, with, *inter alia*, the following data:-
- required signature for a declaration in having fulfilled the Minimum Total CPD Hours. and
- optional filling in of the Actual Total CPD Hours undertaken.

CPD Validation is executed by members by filing with HKIoD, either in response to request by HKIoD or by voluntary submission, the **Record of Continuing Professional Development**, detailing breakdown of CPD activities.

Exemptions: applicable to Associates and Affiliates of HKIoD and those who fit the Rule of 100, ie (age + director experience in years) =/> 100. Those who qualify for exemption are still encouraged to pursue CPD as a recommended practice.

CPD Activities, a *non-exhaustive* list of opportunities producing learning outcome:-
Formal CPD - involves some form of interaction with other individuals, eg
- Attending HKIoD training courses
- Attending HKIoD speaker forums
- Attending training courses of other bodies with relevance to director development.
- Attending speaker forums of other bodies with relevance to director development.
- Delivery of talks in HKIoD forums or facilitating HKIoD training courses.
- Delivery of talks or facilitating training courses organized by other bodies with relevance to director development.
- Organizing HKIoD talks or events.
- Organizing talks or events of other bodies with relevance to director development.
- Director work based: in-house training
- Director work based: leading a new technique or discipline
- Director work based: making a presentation after research
- Director work based: coaching or mentoring regarding director practices
- Service: HKIoD committee work
- Service: board work or committee work regarding director practices in public duties and community services with skills applied in areas beyond one's principal engagement in profession/industry.

Informal CPD - covers self-directed learning where there is no interaction with other individuals, eg
- Knowledge relevant to director development, from relevant books, general/business journals, general/business press, documentaries, videos, audio materials, distance-learning, e-learning.
- Authoring a paper or article with relevance to director development.

香港董事學會
The Hong Kong Institute of Directors

香港董事學會會員評鑒之持續專業進修指引擇要
2011 年度（01/01-12/31）開始實行　指引及表格下載於 http://www.hkiod.com/accreditation.html

適用會員級別：香港董事會學資深會員及會員（**FHKIoD** 及 **MHKIoD**）

「**最少 CPD 總時數**」：－
每年 **10** 小時，而其中 **1** 小時必需來自第一類 CPD 活動，或
每年 **12** 小時，如全部時數來自第二類 CPD 活動。
「**指定最佳時數**」：－
每年 **20** 小時，如達至或超出此時數，並經 CPD 確認，將獲獎賞。
註：－
第一類 CPD 活動，即香港董事學會主辦或有關活動
第二類 CPD 活動，及其它組織主辦或有關活動

「**申報履行**」由會員作出年終申報，每人於填寫「**更新會籍聲明**」表格時一併提供下列資料：
- 必需簽名以申報符合「最少 CPD 時數」。
- 選擇性填寫實質已履行的 CPD 時數。

「**CPD 確認**」可因應學會要求或自發行動，由會員透過遞交「**持續專業進修紀錄**」進一步提供 CPD 明細報告。

豁免承擔：適用於香港董事學會的附屬會員與連繫會員及符合「公式 100」者，即（會員年齡+董事年資）＝／＞100，惟學會仍鼓勵他們跟從最佳常規，追求進修。

CPD 活動，列舉提供學習效能活動例子，惟並非徹底詳盡清單：－
正規 CPD 活動，形式在某程度上必涉及與別人互動，例如
- 參加香港董事學會主辦的培訓課程。
- 參加香港董事學會主辦的演講集會。
- 參加其它組織主辦有關董事發展的培訓課程。
- 參加其它組織主辦有關董事發展的演講集會。
- 於香港董事學會主辦的集會或培訓課程中主講。
- 於其它組織主辦的集會或培訓課程中主講有關董事發展的題目。
- 參與籌組香港董事學會主辦的演講集會或項目。
- 參與籌組其它組織主辦有關董事發展的演講集會或項目。
- 關乎本身董事工作：參加內部培訓。
- 關乎本身董事工作：領導落實新技術或科目。
- 關乎本身董事工作：經過研究後發表解說。
- 關乎本身董事工作：指導或師導有關董事常規。
- 服務範圍：參與香港董事學會委員會工作。
- 服務範圍：參與公職上的董事會或有關董事發展的委員會工作，因而運用技能於其專業或行業上的主要工作以外。

非正規 CPD 活動，無涉及與別人互動的進修，例如
- 從書籍、普通或商業期刊、普通或商業報章、紀錄性刊物或影片、影音材料、遙距學習、電子學習等中獲取有關董事發展的知識。
- 編寫有關董事發展的文件或文章。