



THE
LAW SOCIETY
OF HONG KONG
香港律師會

Practitioners Affairs

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話): (852) 2846 0500
FACSIMILE (傳真): (852) 2845 0387
E-MAIL (電子郵件): sg@hklawsoc.org.hk
WEBSITE (網頁): www.hklawsoc.org.hk

Our Ref :
Your Ref :
Direct Line :

15 March 2011

President
會長

Huen Wong
王桂壠

Vice-Presidents
副會長

Junius K.Y. Ho
何君堯
Dieter Yih
葉禮德

Council Members
理事

Peter C.L. Lo
羅志力
Michael J. Lintern-Smith
史密夫
Ip Shing Hing
葉成慶
Billy W.Y. Ma
馬華潤
Sylvia W.Y. Siu
蕭詠儀
Cecilia K.W. Wong
黃吳潔華
Kenneth S.Y. Ng
伍成業
Stephen W.S. Hung
熊運信
Ambrose S.K. Lam
林新強
Joseph C.W. Li
李超華
Amirali B. Nasir
黎雅明
Melissa K. Pang
彭韻僖
Thomas S.T. So
蘇紹聰
Angela W.Y. Lee
李慧賢
Brian W. Gilchrist
喬柏仁
Gavin P. Nesbitt
倪廣恒
Denis G. Brock
白樂德

Secretary General
秘書長

Heidi K.P. Chu
朱潔冰

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

Dear Sir/Madam,

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

I attach a copy of the Law Society's submissions on the captioned Consultation Paper. We shall be posting the submissions onto the public page of the Law Society's website and have no objection to you posting the document on to HKEx's website.

Yours sincerely,

Encl.



Law Society's Response Consultation Paper Review of the Code on Corporate Governance Practices and Associated Listing Rules

CHAPTER 1: INTRODUCTION

Plain Writing Amendments

Question 1. Do you have any comments on the plainer writing amendments? Do you consider any part(s) of the plainer writing amendments will have unintended consequences?

Answer: No, but comments on amendments which reflect changes in policy (i.e. amendments that are not just plainer language amendments) are set out below.

CHAPTER 2: PROPOSED SUBSTANTIVE AMENDMENTS

PART I: DIRECTORS

1. Directors' Duties and Time Commitments

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

Answer: Yes, texts of the new paragraph added to Rule 3.08 are reproduced below for ease of reference:

“Directors do not satisfy the required levels of skill, care and diligence by delegating their responsibilities to colleagues or management in the issuer and paying attention to its affairs only at formal meetings. At a minimum, they must take an active interest in its affairs and obtain a general understanding of its business. They must follow up anything untoward that comes to their attention.”

Read literally the first sentence disapproves delegation of duties by directors. It should not be the intention that non-executive directors cannot delegate executive responsibilities to management committees or executive directors. We suggest adding “substantially” after “delegating”

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

Answer: *Yes, reference to guidance issued by the Companies Registry and HKIOD is a useful reminder.*

The end of the Note makes the following observation:

“In determining whether a director has met the expected standard of care, skill and diligence, courts will generally consider a number of factors. These include the functions that are to be performed by the director concerned, whether he is a full-time executive director or a part-time non-executive director and his professional skills and knowledge.”

We do not find the above sentence, being an interpretation of common law, add clarity to or better explain (i) the scope of director’s duties or (ii) how the Exchange would monitor compliance with Rule 3.08. We suggest this should be deleted.

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

Answer: *Yes, the term “regularly” imports uncertainty. An amendment is proposed to CP A5.2(a) by replacing “on a regular basis” with “at least annually”. Similar clarity should be given here by imposing a minimum annual review requirement.*

The duty should be expanded to include the making of assessment and reporting to the board of review findings.

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

Answer: *No, the NED annual confirmation is self-serving. Sufficiency on time spending is largely a judgment call better made by other persons. As such it is not too meaningful to extract an annual confirmation from NEDs in the first place. Under the proposed CP A5.2(e), the nomination committee will perform a review of directors’ time commitment and form its own view of the matter. The NED annual confirmation will not add much to the nomination committee’s findings.*

Question 6. Do you agree to include a disclosure requirement in the Corporate Governance Report (paragraph L(d)(ii) of Appendix 14) that NEDs have made annual confirmation to the nomination committee that they have spent sufficient time on the issuer’s business?

Answer: *No, it will be much more meaningful for a summary of the nomination committee findings on whether directors have spent sufficient time to be disclosed in the Corporate Governance Report.*

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

Answer: *No, a person's available time and attention is affected by a range of factors. The total number of professional engagements is one but not the most relevant factor. It is not a sensible policy to legislate on numbers. We consider it sufficient that in the director's acknowledgement to the issuer, the director confirms that he will have sufficient time to meet his obligations having due regard to any other professional commitments, including particularly any directorship in other issuers. This acknowledgement can be supplemented by requiring the nomination committee, when making its recommendation for appointment of board members, to have considered the candidate's available time and attention, professional engagements, directorship in other issuers.*

Question 8. Do you agree to expanding CP A.5.3 (re-numbered CP A.6.3) to state that an NED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business?

Answer: *Yes.*

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

Answer: *Yes, given the emphasis now placed on a director's time and attention commitment and regulatory measures imposed to monitor delivery of such commitment, the issuer's expectation should be recorded and agreed by the appointee at the time of appointment. This should become a code requirement.*

Question 10. Do you agree to upgrading RBP A.5.6 to a CP (re-numbered CP A.6.6) and to amending it to encourage timeliness of disclosure by a director to the issuer on any change to his significant commitments?

Answer: *Yes, we agree on the proposal to up-grade RBP A.5.6 to a CP. But there is no need to impose a timely disclosure requirement. The change in nature or composition of a director's professional engagement does not necessarily have an immediate impact on his ability to provide the time and attention commitment to the issuer. A periodic up-date should be sufficient.*

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

Answer: *No, it is doubtful whether a meaningful limit can be set. See our answer to Question 7. There should be adequate safeguards if the nomination committee is given the responsibility to assess a candidate's ability to deliver his time and attention commitment at the time of appointment to the board and monitor the delivery of such commitment on a continuing basis.*

What is important is whether sufficient attention is given to each INED position. Paragraph 37 of the Consultation Paper makes reference to disciplinary cases where an obvious lack of attention by INEDs to their duties was a contributing factor to non-compliance. It would be helpful if information is given on the average number of INED positions held by these culpable INEDs. Such information would help establish whether limiting the number of INED positions would indeed help improve corporate governance.

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

Answer: *Not Applicable.*

Question 13. If your answer to Question 11 is "yes", do you think that it should be a Rule or a CP?

Answer: *Not applicable.*

2. Directors' Training and Independent Non-executive Directors

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

Answer: *Yes.*

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

Answer: *Yes, given the 10-hours' training requirement imposed by HKIOD on its members.*

Question 16. What training methods do you consider to be acceptable for the requirements stated in the proposed CP (re-numbered RBP A.6.5)? Please give reasons for your views.

Answer: *No, all training methods, including e-learning, acceptable to established professional bodies for continuing professional training purposes should be acceptable; experience gained by HKIOD in organizing and recognizing training for its members should be useful.*

Question 17. Do you agree that we should upgrade RBP A.3.2 (at least one-third of an issuer's board should be INEDs) to a Rule (re-numbered Rule 3.10A)?

Answer: Yes.

Question 18. Do you agree that this Rule (at least one-third of an issuer's board should be INEDs) be effective after a transitional period as described in paragraph 87 of the Consultation Paper?

Answer: Yes.

Question 19. Do you agree that we should upgrade RBP A.4.3 (shareholder to vote on a separate resolution for the further employment of an INED who has served more than nine years) to a CP (re-numbered CP A.4.3)?

Answer: Yes.

Question 20. Do you agree with our proposal to upgrade RBP A.4.8 (issuer should include explanation of its reasons for election and independence of an INED in a circular) to a CP (re-numbered CP A.5.5)?

Answer: Yes.

3. Board Committees

A. Remuneration Committee

Question 21. Do you agree with our proposal to move the requirement for issuers to establish a remuneration committee with a majority of INED members from the Code (CP B.1.1) to the Rules (Rule 3.25)?

Answer: Yes, having regard to the changes that took place in other major markets following the recent financial crisis, elevation of the code requirement to the rules is timely.

Question 22. Do you agree with our proposal that the remuneration committee must be chaired by an INED?

Answer: Yes, given the elevated role of the remuneration committee and the emphasis on its independence, it should be chaired by an INED.

Question 23. Do you agree with our proposal to move the requirement for issuers to have written terms of reference for the remuneration committee from the Code (CP B.1.1) to the Rules (Rule 3.26)?

Answer: Yes, it follows logically from moving the requirement for establishing remuneration committee with a majority of INED members from the Code to the Rules.

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

Answer: Yes.

Question 25. Do you agree with our proposal that issuers that fail to meet Rules 3.25, 3.26 and 3.27 should have three months to rectify this?

Answer: Yes.

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

Answer: Yes.

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

Answer: Yes.

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

Answer: (i) Yes; and (ii) Yes.

Question 29. Do you agree that the term "performance-based" should be deleted from CP B.1.2(c) (re-numbered CP B.1.2(b)) and revised as described in paragraph 118 of the Consultation Paper?

Answer: Yes.

B. Nomination Committee

Question 30. Do you agree that RBP A.4.4 (establishment and composition of a nomination committee, re-numbered CP A.5.1) should be upgraded to a CP?

Answer: Yes, having regard to the requirement of other major markets, elevation of the RBP requirement to Codes is timely.

Question 31. Do you agree that the proposed CP (currently RBP A.4.4) should state that the nomination committee's chairman should be an INED?

Answer: Yes, given the emphasis on independence, the nomination committee should be chaired by an INED.

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

Answer: *Yes, it follows logically from moving the requirement for establishing nomination committee with a majority of INED members from the RBP to the Code.*

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

Answer: *Yes, it follows logically from moving the requirement from the RBP to the Code.*

Question 34. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should implement the issuer's corporate strategy?

Answer *Yes, it follows logically from moving the requirement from the RBP to the Code.*

Question 35. Do you agree that RBP A.4.6 (availability of nomination committee's terms of reference) should be upgraded to a CP?

Answer: *Yes, it follows logically from moving the requirement from the RBP to the Code.*

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

Answer *Yes, it follows logically from moving the requirement from the RBP to the Code.*

Question 37. Do you agree that RBP A.4.7 (sufficient resources for the nomination committee, re-numbered CP A.5.4) should be upgraded to a CP?

Answer: *Yes, it follows logically from moving the requirement from the RBP to the Code.*

Question 38. Do you agree that the proposed CP (currently RBP A.4.7, re-numbered CP A.5.4) should clarify that a nomination committee should be able to seek independent professional advice at the issuer's expense?

Answer: *Yes, it follows logically from moving the requirement from the RBP to the Code.*

C. Corporate Governance Committee

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

Answer: Yes, but on the basis that it is made a RBP rather than a Code requirement.

Question 40. Do you consider that the committee(s) performing the proposed duties listed in paragraph 141 of the Consultation Paper should submit to the board a written report on its work annually?

Answer: Yes, but on the basis that it is made a RBP rather than a Code requirement.

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

Answer: No, the suggested terms of reference of the corporate governance committee are primarily matters of internal importance. The report on its work can remain an internal document of the issuer. Matters of interest to the public shareholders would have been disclosed in other parts of the corporate governance report.

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

Answer: Yes, but D.3.1 and D.3.2 should also be part of RBP, not the Code

Question 43. Do you agree the duties of an existing committee or committees can be expanded to include those of a corporate governance committee?

Answer: Yes, this is essentially an internal allocation of duties and functions which can be left to the issuer.

Question 44. Do you agree with the addition of CP D.3.2 stating that the committee performing the proposed duties listed in paragraph 141 of the Consultation Paper should comprise a majority of INEDs?

Answer: No, the suggested terms of reference of the corporate governance committee are essentially operational matters. The need for independence is not present. There is apparently no policy reason to dictate that the committee shall comprise a majority of INEDs. In any case the requirement should be made a RBP, not part of the Code.

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

Answer: No, if there is no requirement that the committee shall comprise a majority of INEDs. The committee may not be able to discharge its duties properly save with strong participation of the executive directors.

D. Audit committee

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

Answer: Yes.

Question 47. Do you agree with our proposal to amend CP C.3.3(e)(i) to state that the audit committee should meet the external auditor at least twice a year?

Answer: Yes.

Question 48. Do you agree that a new RBP should be introduced to encourage audit committees to establish a whistle-blowing policy?

Answer: Yes.

4. Remuneration of Directors, CEO and Senior Management

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

Answer: Yes.

Question 50. If your answer to Question 49 is yes, do you agree with our proposal that senior management remuneration disclosure should include sales commission?

Answer: No, sales commission generally has no relationship with the management role of the employee. Indeed, those earning high commission may not be a member of management. The question is whether sales commissions are properly paid and this should be a question for the audit committee.

Question 51. Do you agree with our proposal to amend Appendix 16 to require an issuer to disclose the CEO's remuneration in its annual report and by name?

Answer: Yes.

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

Answer: Yes, but emphasis should be placed expressly on long term growth and success. Otherwise, a performance linked remuneration structure would tend to focus on short term success to the detriment of long term growth.

5. Board Evaluation

Question 53. Do you agree with our proposal to add new RBP B.1.8 that issuers should conduct a regular evaluation of its own and individual directors' performance?

Answer: Yes, but there should be some guidance on the criteria for such evaluation and follow-up actions (please refer to paragraph 5 of Singapore Code of Corporate Governance and Principle B.6 of the UK Code Corporate Governance Code by way of examples).

6. Board Meetings

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

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

Answer: Yes, in addition, we propose that written board resolution should not be used where dissenting views have been expressed by one or more of the directors (see Revised CPA 2.6).

Question 55. Do you agree with our proposals to add a note to CP A.1.8 (re-numbered CP A.1.7) stating that attendance at board meetings can be achieved by telephonic or video conferencing?

Answer: Yes.

B. Directors' Attendance at Board Meetings

Question 56. Do you agree with our proposal to add the notes to paragraph I(c) of Appendix 14 (on attendance at board meetings) as described in paragraph 195 of the Consultation Paper?

Answer: Yes.

Question 57. Do you agree with our proposal to introduce a new requirement (paragraph I(d) to Appendix 14) that attendance by an alternate should not be counted as attendance by the director himself?

Answer: Yes.

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

Answer: Yes.

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

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

Answer: No, this is a good bright-line test for materiality. If the issue is with the threshold, consideration should be given to lowering the percentage.

7. Chairman and Chief Executive Officer

Question 60. Do you agree with our proposal to remove the words “at the board level” from Code Principle A.2 to clarify the division between management of the board and day-to-day management of an issuer’s business?

Answer: Yes.

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

Answer: Yes.

Question 62. Do you agree with our proposal to upgrade RBP A.2.4 to a CP to give greater emphasis to the chairman’s duty to provide leadership for the board, to ensure that the board works effectively and discharges its responsibilities, etc.?

Answer: Yes.

Question 63. Do you agree with our proposal to upgrade RBP A.2.5 to a CP and amend it to state: “The chairman should take primary responsibility for ensuring that good corporate governance practices and procedures are established”?

Answer: Yes.

Question 64. Do you agree with our proposal to upgrade RBP A.2.6 to a CP to emphasise the chairman’s responsibility to encourage directors with different views to voice their concerns, allow sufficient time for discussion of issues and build consensus?

Answer: Yes.

Question 65. Do you agree with our proposal to upgrade RBP A.2.7 to a CP and amend it to state that the chairman should hold separate meetings with only INEDs and only NEDs at least once a year?

Answer: Yes.

Question 66. Do you agree with our proposal to upgrade RBP A.2.8 to a CP to highlight the chairman's role to ensure effective communication between the board and shareholders?

Answer: Yes.

Question 67. Do you agree with our proposal to upgrade RBP A.2.9 to a CP to emphasise the chairman's role to enable NED contributions and constructive relations between EDs and NEDs?

Answer: Yes.

8. Notifying directorship change and disclosure of directors' information

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

Answer: Yes.

Question 69. Do you agree that we should amend Rule 13.51(2) to apply to the appointment, resignation, re-designation, retirement or removal of a CEO (and not only to a director or supervisor)?

Answer: Yes.

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

Answer: Yes.

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

Answer: Yes, but the appropriate wording should be "those made against him in relation to the issuer".

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

Answer: Yes.

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

Answer: Yes, but only if such judgments are final and not subject to appeal.

9. Providing Management Accounts or Management Updates to the Board

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

Answer: No, this should be the subject of a stand-alone consultation paper as the proposal will significantly increase the workload expectation on NEDs and INEDs. Whilst there are merits in advocating frequent reporting or updates to the board to enable it to discharge its oversight function, requiring monthly updates of such items of information suggested in CP C.1.2 can be over-prescriptive, excessive and unduly burdensome for conglomerate issuers with diverse business lines and comprising many subsidiaries (some of which may also be issuers). The guiding principle should be regular updates, but it should be up to the boards and the respective issuers to decide how regular the relevant updates should be by reference to such factors such as the size and complexity of the issuers' operations and structures and the intervals of the board meetings.

10. Next Day Disclosure for a Director Exercising an Option in the Issuer or the Issuer's Subsidiaries

Question 75. Do you agree with the proposed amendment to Rule 13.25A(2)(a)(viii) and (ix) removing the need for issuers to publish a Next Day Disclosure Return following the exercise of options for shares in the issuer by a director of a subsidiary?

Answer: Yes.

Question 76. Do you agree with the proposed amendment to Rule 13.25A(2)(b)(i) and (ii) to require issuers to publish a Next Day Disclosure only if options for shares in the issuer exercised by a director of its subsidiary or subsidiaries results in a change of 5% or more (individually or when aggregated with other events) of the issuer's share capital since its last Monthly Return?

Answer: Yes.

11. Disclosing Long Term Basis on which an Issuer Generates or Preserves Business Value

Question 77. Do you agree that we should introduce the proposed CP (CP C.1.4) as described in paragraph 250 of the Consultation Paper?

Answer: Yes.

12. Directors' Insurance

Question 78. Do you agree with our proposal to upgrade RBP A.1.9 (issuers should arrange appropriate insurance for directors) to a CP (re-numbered CP A.1.8)?

Answer: Yes.

Question 79. Do you agree with our proposal to add the words "adequate and general" to RBP A.1.9 (upgraded and re-numbered CP A.1.8)?

Answer: Yes.

PART II: SHAREHOLDERS

1. Shareholders' General Meetings

A. Notice of Meeting and Bundling of Resolutions

Question 80. Do you agree with our proposal to amend CP E.1.1 to state that issuers should avoid "bundling" of resolutions and where they are "bundled" explain the reasons and material implications in the notice of meeting?

Answer: Yes.

B. Voting by Poll

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

Answer: Yes.

Question 82. Do you agree with the examples of procedural and administrative resolutions in paragraph 275 of the Consultation paper? Do you have any other examples to add?

Answer: Yes.

Question 83. Do you agree that our proposed amendments to Rule 13.39(5) clarify disclosure in poll results?

Answer: Yes.

Question 84. Do you agree with our proposal to amend CP E.2.1 to remove the words "at the commencement of the meeting" so that an issuer's chairman can explain the procedures for conducting a poll later during a general meeting?

Answer: Yes.

C. Shareholders' Approval to Appoint and Remove an Auditor

Question 85. Do you agree with our proposal to add new Rule 13.88 to require shareholder approval to appoint the issuer's auditor?

Answer: Yes.

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

Answer: Yes.

Question 87. Do you agree that the new Rule 13.88 should require a circular for the removal of the auditor to shareholders containing any written representation from the auditor and allow the auditor to make written and/or verbal representation at the general meeting to remove him?

Answer: Yes.

D. Directors' Attendance at Meetings

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

Answer: Yes.

Question 89. Do you agree with our proposal to upgrade RBP A.5.8 (NEDs should make a positive contribution to the development of the issuer's strategy and policies) to a CP (re-numbered CP A.6.8)?

Answer: Yes.

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

Answer: Yes.

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

Answer: No, some committees may be ad hoc committees whose jobs, once done, have little relevance to the discussion at general meetings.

E. Auditor's Attendance at Annual General Meetings

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

Answer: Yes.

2. Shareholders' Rights

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

Answer: Yes.

3. Communication with Shareholders

A. Establishing a Communication Policy

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

Answer: Yes, in addition, we propose the Consultation Paper E.1.4 should include guidance as to the minimum contents of the policy along the lines of paragraph 315 of the Consultation Paper.

B. Publishing Constitutional Documents on Website

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

Answer: Yes, this is one of the most important documents for shareholders to understand their rights.

C. Publishing Procedures for Election of Directors

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

Answer: No, this should be in the M&A or constitutional document already.

D. Disclosing Significant Changes to Constitutional Documents

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

Answer: Yes.

PART III: COMPANY SECRETARY

1. Company Secretary's Qualifications, Experience and Training

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

Answer: Yes.

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

Answer: Yes, these are qualifications currently considered acceptable.

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

Answer: Yes, however, some care must be taken in considering qualifications obtained in other jurisdictions. There should also be assurances that the Company Secretary is reasonably familiar with the legal and regulatory regime applicable to companies listed in Hong Kong. This should include a general understanding of the Securities and Futures Ordinance, the Companies Ordinance (or certain provisions thereof if the issuer is a non-HK company), the Hong Kong Takeovers Code and Code on Share Repurchase.

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

Answer: Yes.

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

Answer: Yes.

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

Answer: Yes, "Relevant professional training" should be carefully defined.

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

Answer: Yes.

2. New Section in Code on Company Secretary

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

Answer: Yes.

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

Answer: Yes.

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

Answer: Yes.

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

Answer: Yes, the provision should expressly states that the Code Provision is considered to be complied with if such arrangement is made.

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

Answer: Yes.

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

Answer: Yes.

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

Answer: No, on board matters, the company secretary should report to the Chairman rather than the CEO.

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

Answer: Yes.

CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS

1. Definition of “Announcement” and “Announce”

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

Answer: Yes.

2. Authorised Representatives’ Contact Details

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

Answer: Yes.

3. Merging Corporate Governance Report Requirements into Appendix 14

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

Answer: Yes.

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

Answer: Yes.

**The Law Society of Hong Kong
Company and Financial Law Committee
15 March 2011**

142509v2



THE
LAW SOCIETY
OF HONG KONG
香港律師會

Practitioners Affairs

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話): (852) 2846 0500
FACSIMILE (傳真): (852) 2845 0387
E-MAIL (電子郵件): sg@hklawsoc.org.hk
WEBSITE (網頁): www.hklawsoc.org.hk

Our Ref :
Your Ref :
Direct Line :

17 March 2011

President
會長

Huen Wong
王桂壠

Vice-Presidents
副會長

Junius K.Y. Ho
何君堯
Dieter Yih
葉禮德

Council Members
理事

Peter C.L. Lo
羅志力
Michael J. Lintern-Smith
史密夫
Ip Shing Hing
葉成慶
Billy W.Y. Ma
馬華潤
Sylvia W.Y. Siu
蕭詠儀
Cecilia K.W. Wong
黃吳潔華
Kenneth S.Y. Ng
伍成業
Stephen W.S. Hung
熊運信
Ambrose S.K. Lam
林新強
Joseph C.W. Li
李超華
Amirali B. Nasir
黎雅明
Melissa K. Pang
彭韻偉
Thomas S.T. So
蘇紹聰
Angela W.Y. Lee
李慧賢
Brian W. Gilchrist
喬柏仁
Gavin P. Nesbitt
倪廣恒
Denis G. Brock
白樂德

Secretary General
秘書長

Heidi K.P. Chu
朱潔冰

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

Dear Sirs,

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

I refer to my letter dated 15 March 2011 attaching the Law Society's submissions on the Consultation Paper.

The Law Society wishes to emphasize its position in relation to Question 54 as there was no support for the proposal when it was announced by HKEx in April 2010:

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

Answer: *Yes, in addition, we propose that written board resolution should not be used where dissenting views have been expressed by one or more of the directors (see Revised CPA 2.6).*

I take the opportunity of attaching the Law Society's letter dated 19 April 2010 for reference.

Yours sincerely,

Encl.



THE

LAW SOCIETY
OF HONG KONG

香港律師會

Practitioners Affairs

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話) : (852) 2846 0500
FACSIMILE (傳真) : (852) 2845 0387
E-MAIL (電子郵件) : sg@hklawsoc.org.hk
WEBSITE (網頁) : www.hklawsoc.org.hk

Our Ref :
Your Ref :
Direct Line :

19 April 2010

BY HAND

President
會長

Huen Wong
王植城

Vice Presidents
副會長

Junius K.Y. Ho

何君堯

Dieter Yih

葉禮德

Council Members
理事

Lester G. Huang

黃嘉純

Peter C.L. Lo

羅志力

Michael J. Lintern-Smith

史密夫

Ip Shing Hing

葉成慶

Billy W.Y. Ma

馬華潤

Sylvia W.Y. Siu

蕭詠儀

Cecilia K.W. Wong

黃吳潔華

Kenneth S.Y. Ng

何業

Stephen W.S. Hung

熊運信

Ambrose S.K. Lam

林新強

Joseph C.W. Li

李超華

Amirali B. Nasir

黎雅明

Melissa K. Pang

彭韻儀

Thomas S.T. So

蘇紹聰

Angela W.Y. Lee

李慧賢

Brian W. Gilchrist

喬柏仁

Gavin P. Nesbitt

倪廣恒

Secretary General

秘書長

Raymond C.K. Ho

何志強

Deputy Secretary General

副秘書長

Heidi K.P. Chu

朱潔冰

Hong Kong Exchange and Clearing Limited
10/F, One international Finance Centre
1 Harbour View Street, Central, Hong Kong

Dear Sirs,

Re: HKEx's Proposal to amend its Articles of Association

The Law Society refers to HKEx's announcement dated 12 April 2010 on the captioned matter.

The Law Society's Company and Financial Law Committee and Securities Law Committee have considered the proposal and have reached agreement that adoption to amend the Articles of Association would set a bad precedent for corporate governance in Hong Kong as outlined in the attached comments.

Yours sincerely,

Encl.



THE
LAW SOCIETY
OF HONG KONG
香港律師會

HKEx's Proposal to Amend its Articles of Association Law Society's Comments

On 12 April 2010 Hong Kong Exchanges and Clearing Limited ("HKEx") announced, among others, a proposal to amend its Articles of Association (Articles) for shareholders' approval at the annual general meeting to be held on 22 April 2010.

The Law Society considers HKEx's stated position on this occasion to be quite untenable and sets a bad example in corporate governance practice for Hong Kong public companies, especially given HKEx's unique position in Hong Kong's financial and regulatory infrastructure.

The Law Society considers good corporate governance practice dictates that when there are dissenting directors the matter should not be decided before they are heard, and the use of written resolutions in these circumstances would be inappropriate. The reference to article 103 in HKEx's response is not convincing because a director's right to call for a meeting would not stop a written resolution from being passed by a simple majority before the dissenting directors are heard. This fact has been indirectly admitted by HKEx.

HKEX corporate governance is likely to be highly influential not just because of its role as a regulator but also because it is the sole operator of the Hong Kong stock market. This proposal would set a bad precedent.

The Law Society of Hong Kong
Company and Financial Law Committee
Securities Law Committee
19 April 2010
134075