



創於1913年
Founded in 1913

香港華人會計師公會

The Society of Chinese Accountants & Auditors

(在香港註冊成立之有限公司)

(Incorporated in Hong Kong as a company limited by guarantee)

18th March, 2011

By Fax (2524-0149) and Mail

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

Dear Sirs,

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

In response to your Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules ("Consultation Paper") issued in December 2010, we would like to submit our comments on the Consultation Paper.

The Society of Chinese Accountants and Auditors is an incorporated body of professional accountants in Hong Kong established since 1913. Our members are practising Certified Public Accountants and representing a significant number of practising firms of accountants in Hong Kong. Our primary objectives include:

- to provide a professional development channel for all practising accountants in Hong Kong,
- to assist members to maintain high standards of professional conduct, and
- to provide services to its members and their members' staff, and to advance the theory and practice of accountancy.

As our members are practising accountants who have more flexible working hours and stronger accounting knowledge, many of whom are presently acting as independent non-executive directors ("INEDs"). In this respect, we would like to share with you some suggestions regarding the key proposals that will affect INEDs for your consideration. We have recently held a members' forum to seek our members' views on the Consultation Paper, mainly regarding INEDs. In general, we are in support of your endeavors to promote the development of higher corporate governance standards in Hong Kong and to require that one-third of the board to be INEDs. The key comments from our Council and members are summarised as attached.



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We should be glad to discuss with you our comments in further details if so required. Please contact the undersigned at

Yours sincerely

The Society of Chinese Accountants and Auditors

Encl.

LIST OF QUESTIONS FOR CONSULTATION (EXTRACTED)

A. Question 11

Do you consider that there should be a limit on the number of INED positions an individual may hold? Please give reasons for your views.

No, we do not. As a matter of fact, some INEDs, such as the retired accountants or professional INEDs, have more than sufficient time and capability to devote to the INED positions that they have taken up. The more INED positions one has taken, the more expertise and experience one can accumulate to perform his/her duties as INED.

In addition, the capability of the INEDs varies among different persons. Some of the INEDs are very competent and can handle matters speedily as they are very familiar with the INED work. Imposing a limitation may prejudice these diligent, competent INEDs.

In this respect, we are of the view that the number of INED positions should depend on the individual's competency and time allocation instead of the number of INED positions the individual has taken up.

B. 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)? Please give reasons for your views.

Yes, we do. Undoubtedly, the independence, objectivity and expertise of INEDs are assets of the issuer's business. The INEDs perform many important duties. They can participate in different board committees as there are formation of committees being now recommended by the Consultation Paper. They also represent shareholders as a whole where other directors may have a conflict of interests.

Meanwhile, regarding Listing Rule 3.10(2) "at least one of the INEDs must have appropriate professional qualifications or accounting or related financial management expertise (collectively 'Accounting Professional')", we observe that the workload of these Accounting Professionals as INEDs have increased significantly given that the financial information in nowadays' business is overwhelming.

In respect of the growing in number for members of some of the boards and even for the present boards that have met the one-third composition of INEDs, we recommend as a good practice to have "at least two of the INEDs must have appropriate professional qualifications or accounting or related financial management expertise". Apart from sharing of workload, the two or more Accounting Professionals as INEDs can complement the others in handling difficult board issues.

C. 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)? Please give reasons for your views.

No, we do not. We hold the view that the length of service as an INED will not affect his/her independence. An INED's familiarity with an issuer's business may place him/her in a better position to contribute independent views. Equally, it is possible for an INED who has served on a board only a short time not to be independent. Independence may be more of a "mind-set" and not influenced by the number of years spent on the board.

In addition, it is a controversial view on how to determine the length of service as an INED. In fact, many INEDs may be familiarized with many board members for years before they were appointed as an INED. The length of their service is difficult to be determined.

D. 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)? Please give reasons for your views.

Yes, we do. We agree that shareholders can make an informed decision on the appointment of the nominated INEDs.

E. 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)? Please give reasons for your views.

Yes, we do. As the INEDs is a majority can provide a more independent board.

F. Question 22

Do you agree with our proposal that the remuneration committee must be chaired by an INED? Please give reasons for your views.

No, we do not. The chairman of remuneration committee should not be an INED. An INED may have difficulty to assess the daily performance of the other executive directors and top management.

G. 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? Please give reasons for your views.

Yes, we do. The formation of this committee will be helped to form a better composition of a board and a step forward in corporate governance.

H. 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? Please give reasons for your views.

Yes, we do. The chairman of nomination committee has a powerful leadership role in determining the nomination of the directors and INED is a better person to take up this position with an independent view.

I. Question 43

Do you agree the duties of an existing committee or committees can be expanded to include those of a corporate governance committee? Please give reasons for your views.

No, we do not. The duties of the corporate governance committee are so important that they should not be resolved by just expanding the duties of an existing board committee or committees as an alternative.

J. 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 should comprise a majority of INEDs? Please give reasons for your views.

Yes, we do. As the committee is responsible for corporate governance compliance, it must be freed from the influence of executive directors and top management. With majority of INEDs as its members, the independence of the committee can be maintained.