



Association for Sustainable & Responsible Investment in Asia

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

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

Dear Sir or Madame:

We are writing in response to the consultation on the Code on Corporate Governance Practices and Associated Listing Rules. The Association for Sustainable & Responsible Investment in Asia Ltd (ASrIA) is a membership association dedicated to promoting corporate responsibility and sustainable investment practice in the Asia Pacific region. We welcome this opportunity to provide commentary on your proposed changes.

ASrIA is a membership organisation promoting the integration of environmental, social and corporate governance issues in the finance and investment decision-making process.

ASrIA's members include investment institutions; however, membership is open to any organisation which has an interest in sustainable investment. Our goal is to build market capacity for Sustainable and Responsible Investment. A critical issue for retail and institutional investors is the quality of corporate governance policies and practices. We strongly encourage companies and investment professionals to integrate environmental, social and corporate governance (ESG) considerations into their strategic decision-making as well as day-to-day operations.

While the exchange's consultation is wide-ranging, there has been considerable media coverage on a few of the proposed changes. Below we comment on some of these. Our entire submission follows this letter.

Question 11: Do you consider that there should be a limit on the number of Independent Non-Executive Director (INED) positions an individual may hold?

We do not advocate a rigid limit to the number of INED positions an individual holds but stress the importance of truly 'independent' directors.

Establishing rigid rules about the number of directorships an individual can hold is not necessarily effective, as there's no convincing evidence which correlates the number of INED positions held with total shareholder returns over the long term. More important is the fact that in some cases 'independent' directors are not actually independent, that is, protecting minority shareholder interests because listed issuers are able to appoint INEDs.

Questions 14 and 16 relate to director training:

- *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)?*
- *What training methods do you consider to be acceptable for the requirements stated in the proposed CP (re-numbered RBP A.6.5)?*



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Director training and capacity building are essential for the effective oversight of listed issuers. We would further recommend the proposed CP A.6.5 be made a Rule by 31 December 2012.

Directors are not familiar with relevant Best Practice Recommendations, Code Provisions, or Rules in some cases. For example, the consultation document notes that some board members commented that they do not want to receive management accounts on a regular basis because they may contain unpublished price sensitive information. And therefore, these management accounts could potential trigger a need to publish price sensitive information. It suggests the board members are not aware of the general obligation under Rule 13.09(1) to publish any price sensitive information as soon as possible, whether or not management accounts or management updates are provided to directors. The lack of awareness of Rule 13.09(1) is a good reason why all directors should be required to undergo training every year.

Training content should also include ways to guide an effective corporate governance structure and practice on environmental and social issues which impact the decision-making of shareowners and other stakeholders.

Training content should not only include regulations on accounting standards, Rules, the Code and Listing Decisions but also ways to guide an effective corporate governance structure and practice on environmental and social issues which impact the decision-making of shareowners and other stakeholders. The Secretary of Environment of the Hong Kong SAR Government recently noted how important environmental issues are for board members to consider in their oversight of corporate strategy and implementation.¹

Many of the proposed training methods fall within the normal course of activities of directors and therefore make the proposed CP too accommodating. Referencing the Securities and Futures Commission's *Guidelines on Continuous Professional Training* (持續培訓的指引): "Normal working activities, general reading of financial press or technical, professional, financial or business literature and activities which do not involve interaction with other individuals will generally not be regarded as CPT activities."²

We would tend, therefore, to accept the following training methods, with (a)-(c) and (i) being more credible:

- (a) attending courses, workshops, lectures and seminars;
- (b) distance learning which requires submission of assignments;
- (c) self-study with independent assessments;
- (d) industry research;
- (e) publication of papers;
- (f) delivery of speeches;
- (g) giving lectures or teaching;
- (h) providing comments to industry consultation papers;
- (i) attending meetings or undertaking activities as members of [HKSE's] ~~SFC's~~ regulatory committees or official working groups; and
- (j) for attending luncheon talks [about corporate governance] which normally last for 1 to 2 hours in total, 0.5 hours will be counted.

¹ Hong Kong Institute of Directors, *The 21st Century*, "Going green": http://www.hkiod.com/document/21century/issue7/going_green.pdf
² <http://www.sfc.hk/sfcRegulatoryHandbook/EN/displayFileServlet?docno=H200>



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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)?

This upgrade is a step in the right direction for more effective corporate governance. You could consider the following principle: "Call for a majority of independent non-executives at companies with a dispersed shareholder base, and one-third independence when there is a shareholder with effective control of the company."

While the number of INEDs is an important factor for effective corporate governance, more critical is the degree of "independence" of INEDs. In some cases INEDs are not truly independent, that is, protecting minority shareholder interests.

Therefore, we propose that a majority of non-controlling shareholders approve the election of independent directors, subject to re-election on an annual or triennial basis. The board would still be able to nominate their INEDs but approval would come from the shareholders whose interest the INEDs are supposed to be protecting.

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

We add language for the terms of reference for what we call the *Environmental, Social, and Corporate Governance Committee* (or existing committee(s) performing or sharing this function):

- (a) to develop and review an issuer's policies and practices on environmental, social and corporate governance and make recommendations to the board;
- (b) to review and monitor the training and continuous professional development of directors and senior management;
- (c) to review and monitor the issuer's policies and practices on compliance with legal and regulatory requirements including environmental and social issues;
- (d) to develop, review and monitor the code of conduct and compliance manual (if any) applicable to employees and directors; and
- (e) to review the issuer's compliance with the Code and disclosure in the corporate governance report section of its financial statements.

Again, ASRIA welcomes the exchange's goal to improve transparency on corporate governance policies and practices of listed issuers. Our responses are on behalf of ASRIA and do not necessarily reflect the views of our individual members. Our responses do, however, incorporate feedback from investor members active in corporate governance issues around the world. We would be grateful if you would carefully consider our opinions and look forward to seeing the implementation of the revised Code on Corporate Governance Practices and Associated Listing Rules.

Yours faithfully,

[Faint signature and stamp area]

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Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp2010124.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

CHAPTER 1: INTRODUCTION

Plain Writing Amendments

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

Yes

No

Please give reasons for your views.

CHAPTER 2: PROPOSED SUBSTANTIVE AMENDMENTS

PART I: DIRECTORS

1. Directors' Duties and Time Commitments

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

The guides add clarity to Rule 3.08. The guides can also be referenced in training for the directors.

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

Yes

No

Please give reasons for your views.

The nomination committee should be able to tell current and prospective directors as well as shareowners of the listed companies how much time the directors will be expected to perform in their oversight of the company.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

We advocate more disclosure, not less, so that stakeholders including shareowners of listed companies have information which may be material in their decision-making process. The problem with this requirement is that "spent sufficient time on the issuer's business" is highly subjective, so we don't anticipate many directors not being able to fulfil this requirement.

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

Yes

No

Please give reasons for your views.

A director should acknowledge to the issuer that he or she will have sufficient time to meet his or her obligations. It is unclear what "limit his other professional commitments" will mean in practice.

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

Yes

No

Please give reasons for your views.

We advocate more disclosure, not less, so that stakeholders including shareowners of listed companies have information which may be material in their decision-making process. The problem with this requirement is that "spent sufficient time on the issuer's business" is highly subjective, so we don't anticipate many directors not being able to fulfil this requirement.



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

Yes

No

Please give reasons for your views.

We further recommend the revised CP D.1.4 be a Rule by 31 December 2012. Listed companies – from small to large firms – should be in a position to describe the duties and time commitments for NEDs, and these descriptions in the letter of appointment should be transparent to stakeholders included shareowners of the listed companies.

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

Yes

No

Please give reasons for your views.

Yes, and this CP should be a Rule by 31 December 2012. Moreover, the current proposed language "in a timely manner for any change" is too ambiguous. Some companies could interpret that as an annual update in the Annual Report while other companies could interpret that as "immediately." We recommend any change to a director's significant commitments such as but not limited to a new appointment to another board of directors should be publicly disclosed within five (5) business days.

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

Yes

No

Please give reasons for your views.



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We don't think establishing rigid rules about the number of directorships an individual can hold is effective, as there's no convincing evidence which correlates the number of INED positions held with total shareholder returns over the long term. More important is the fact that in some cases 'independent' directors are not truly independent, that is, protecting minority shareholder interests.

Therefore, we propose that a majority of non-controlling shareholders should approve independent directors, subject to re-election on an annual or triennial basis. The board would still be able to nominate INEDs but non-controlling shareholders would approve the nominees. This mechanism would help ensure that the interests of minority shareholders are protected.

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

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

Rule

CP

Please give reasons for your views.

2. Directors' Training and Independent Non-executive Directors

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

Yes

No

Please give reasons for your views.

Director training is essential for the effective oversight of companies. We would further recommend the proposed CP A.6.5 be made a Rule by 31 December 2012. Training should not only include regulations on accounting standards, Rules, the Code and Listing Decisions but also ways to guide an effective corporate governance structure and practice on environmental and social issues which impact the decision-making of shareowners and other stakeholders.



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

Yes

No

Please give reasons for your views.

There is no global standard about the minimum number of hours of directors training per financial year. Therefore, we don't have a specific number in mind. However, we note two alternatives.

First, the exchange may consider requiring ten (10) hours minimum of training to be aligned with the requirements for Hong Kong Institute of Directors (HKIOD) membership.

A second proposal would be that at least the Chairman and one (1) other director participate in more intensive corporate governance training, say 20 hours each financial year. This proposal would mean that at least two (2) board members are in a position to share with their other colleagues the most up to date corporate governance policies and practices in the world.

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.

Many of the proposed training methods fall within the normal course of activities of directors and therefore make the proposed CP too accommodating. Referencing the Securities and Futures Commission's *Guidelines on Continuous Professional Training* (持續培訓的指引), published March 2003 (<http://www.sfc.hk/sfcRegulatoryHandbook/EN/displayFileServlet?docno=H200>), "Normal working activities, general reading of financial press or technical, professional, financial or business literature and activities which do not involve interaction with other individuals will generally not be regarded as CPT activities."

We would tend, therefore, to accept the following training methods, with (a)-(c) and (i) being more credible:

- (a) attending courses, workshops, lectures and seminars;
- (b) distance learning which requires submission of assignments;
- (c) self-study with independent assessments;
- (d) industry research;
- (e) publication of papers;
- (f) delivery of speeches;
- (g) giving lectures or teaching;
- (h) providing comments to industry consultation papers;
- (i) attending meetings or undertaking activities as members of [HKSE's] ~~SFC's~~ regulatory committees or official working groups; and
- (j) for attending luncheon talks [about corporate governance] which normally last for 1 to 2 hours in total, 0.5 hours will be counted.

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

Yes

No

Please give reasons for your views.

This upgrade is a step in the right direction for more effective oversight. We note an ASRIA member has the following principle: "Call for a majority of independent non-executives at companies with a dispersed shareholder base, and one-third independence when there is a shareholder with effective control of the company."

While the number of INEDs is an important consideration for effective corporate governance, more important is the fact that in some cases "independent" directors are not truly independent, that is, protecting minority shareholder interests.

Therefore, we propose that a majority of non-controlling shareholders approve the election of independent directors, subject to re-election on an annual or triennial basis. The board would still be able to nominate their INEDs but approval would come from the shareholders whose interest the INEDs are supposed to be protecting.

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

Yes

No

Please give reasons for your views.

While the number of INEDs is an important consideration for effective corporate governance, more important is the fact that in some cases "independent" directors are not truly independent, that is, protecting minority shareholder interests.

Therefore, we propose that a majority of non-controlling shareholders approve the election of independent directors, subject to re-election on an annual or triennial basis. The board would still be able to nominate their INEDs but approval would come from the shareholders whose interest the INEDs are supposed to be protecting.

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

Yes

No

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Please give reasons for your views.

More important is the fact that in some cases “independent” directors are not truly independent, that is, protecting minority shareholder interests.

Therefore, we propose that a majority of non-controlling shareholders approve the election of independent directors, subject to re-election on an annual or triennial basis. The board would still be able to nominate their INEDs but approval would come from the shareholders whose interest the INEDs are supposed to be protecting.



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

Yes

No

Please give reasons for your views.

To ensure the independence of INEDs, we propose that a majority of non-controlling shareholders approve the election of independent directors, subject to re-election on an annual or triennial basis. The board would still be able to nominate their INEDs but approval would come from the shareholders whose interest the INEDs are supposed to be protecting.

3. Board Committees

A. Remuneration Committee

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

In addition, we propose that a majority of non-controlling shareholders approve the election of independent directors, subject to re-election on an annual or triennial basis. The board would still be able to nominate their INEDs but approval would come from the shareholders whose interest the INEDs are supposed to be protecting.



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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

Yes, but the exchange should mandate any rule violation - not just for Rules 3.25, 3.26, and 3.27 – should be disclosed. Stakeholders including shareowners of the listed company should know when a company is in violation of any and all Rules.

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

Yes

No

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

Yes

No

Please give reasons for your views.

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Independent advice for remuneration packages is critical.

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

Yes

No

Please give reasons for your views.

Under Model B: The board should disclose why it has approved a remuneration package which the remuneration committee has not approved. Not only should this disclosure be made in the corporate governance report but also in the Annual Report. Moreover, stakeholders including shareowners of listed companies need this type of information in a timely manner. Shareowners require disclosure on a wide variety of issues including environmental and social issues. Within social issues are disclosures about senior management and board remuneration. Timely disclosure allows comparison of the compensation of senior management with what that of the average employee.

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

(i) Yes No

(ii) Yes No

Please give reasons for your views.

Under Model B: The board should disclose why it has approved a remuneration package which the remuneration committee has not approved. Not only should this disclosure be made in the corporate governance report but also in the Annual Report. Moreover, stakeholders including shareowners of listed companies need this type of information in a timely manner. Shareowners require disclosure on a wide variety of issues including environmental and social issues. Within social issues are disclosures about senior management and board remuneration. Timely disclosure allows comparison of the compensation of senior management with what that of the average employee.

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

Yes

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No

Please give reasons for your views.



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B. Nomination Committee

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

The proposed CP should be a Rule by 31 December 2012. Terms of reference for all board committee should be publicly available on the HKEx website as well as the listed issuer's website.



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

Yes

No

Please give reasons for your views.

We further recommend terms of reference for all board committees – not only the nomination committee - should be made publicly available on the HKEx website as well as the listed issuer's website.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.



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C. Corporate Governance Committee

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

Yes

No

Please give reasons and alternative suggestions.

We add language for the terms of reference for what we call the *Environmental, Social, and Corporate governance Committee* (or existing committee(s) performing or sharing this function:

- (a) to develop and review an issuer's policies and practices on **environmental, social and corporate governance** and make recommendations to the board;
- (b) to review and monitor the training and continuous professional development of directors and senior management;
- (c) to review and monitor the issuer's policies and practices on compliance with legal and regulatory requirements **including environmental and social issues**;
- (d) to develop, review and monitor the code of conduct and compliance manual (if any) applicable to employees and directors; and
- (e) to review the issuer's compliance with the Code and disclosure in the corporate governance report section of its financial statements.

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

Yes

No

Please give reasons for your views.

There needs to be a formal record of the performance of the committee.

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

Yes

No

Please give reasons for your views.

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Stakeholders including shareowners should have access to the performance of the *Environmental, Social, and Corporate governance Committee* (or existing committee(s) performing or sharing these functions. Otherwise, shareowners cannot reasonably hold the board members accountable.

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

Yes

No

Please give reasons for your views.

We recommend listed issuers establish an *Environmental, Social, and Corporate governance Committee*. Please refer to our answer to Question 39 for proposed terms of reference.

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

Yes

No

Please give reasons for your views.

Yes, but we would favour the establishment of a *Environmental, Social, and Corporate governance Committee* (or existing committee(s) performing or sharing this function as outlined in our response to Question 39.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

This added note is sensible and should be applied to all other board committees.

D. Audit committee

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

Yes

No

Please give reasons for your views.

We further recommend the proposed CP made a Rule by 31 December 2012. Having a "whistleblower" policy is critical for the protection of employees, customers, consumers, shareowners as well as other stakeholders.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

We further recommend the proposed RBP be made a Rule by 31 December 2012. Having a "whistleblower" policy is critical for the protection of employees, customers, consumers, shareowners as well as other stakeholders.

4. Remuneration of Directors, CEO and Senior Management

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

5. Board Evaluation

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

Yes

No

Please give reasons for your views.

We further recommend the proposed RBP be made a Rule by 31 December 2012. The shareowners of the listed company are the ultimate evaluators of the board. Therefore, evaluation of the board and individual directors' performance should be made publicly disclosed so shareowners can prepare for the Annual General Meeting.



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6. Board Meetings

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

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

Yes

No

Please give reasons for your views.

Discussion on resolutions on a material matter including connect transactions should be held. Circulating an email or other written documentation is not sufficient to protect the interests of shareowners, in particular non-controlling shareholders, and other stakeholders.

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

Yes

No

Please give reasons for your views.

B. Directors' Attendance at Board Meetings

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

Yes

No

Please give reasons for your views.



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(a) and (b) notes are sensible. Only attendance by a director in person, telephonic or video-conferencing should be counted, and
(b) if a director is appointed part way during a financial year, his attendance should be stated by reference to the number of board meetings held during his tenure.

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

Yes

No

Please give reasons for your views.

The shareowners have elected specific directors with specific duties. The use of alternates at board meetings suggests a director is delegating his or her responsibilities. If the director has a reason for not attending a board meeting, then he or she is free to disclose the reason to shareowners.

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

Yes

No

Please give reasons for your views.

However, we recommend removing “separately the number of board or committee meetings attended by his alternate” as this phrase is inconsistent with the effort to discourage the use of alternates.

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

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

Yes

No

Please give reasons for your views.



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7. Chairman and Chief Executive Officer

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

Upgrading to CP is aligned with other major jurisdictions. This CP should be made a Rule by 31 December 2012.



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

Yes

No

Please give reasons for your views.

Upgrading to CP is aligned with other major jurisdictions. This CP should be made a Rule by 31 December 2012.

You can also reference our response to Question 15, which reads:

"There is no global standard about the minimum number of hours of directors training per financial year. Therefore, we don't have a specific number in mind. However, we note two alternatives.

First, the exchange may consider requiring ten (10) hours minimum of training to be aligned with the requirements for Hong Kong Institute of Directors (HKIOD) membership.

A second proposal would be that at least the **Chairman** and one (1) other director participate in more intensive corporate governance training, say 20 hours each financial year. This proposal would mean that at least two (2) board members are in a position to share with their other colleagues the most up to date corporate governance policies and practices in the world."

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

Yes

No

Please give reasons for your views.

Upgrading to CP is aligned with other major jurisdictions. This CP should be made a Rule by 31 December 2012.

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

Yes

No

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Please give reasons for your views.

Upgrading to CP is aligned with other major jurisdictions. This CP should be made a Rule by 31 December 2012.



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

Yes

No

Please give reasons for your views.

Upgrading to CP is aligned with other major jurisdictions. This CP should be made a Rule by 31 December 2012.

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

Yes

No

Please give reasons for your views.

Upgrading to CP is aligned with other major jurisdictions. This CP should be made a Rule by 31 December 2012.

8. Notifying directorship change and disclosure of directors' information

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

Public disclosure of directors' information should be made available on the listed issuer's website and the HKEx website.

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

Yes

No

Please give reasons for your views.

Public disclosure of directors' information should be made available on the listed issuers website and the HKEx website.

9. Providing Management Accounts or Management Updates to the Board

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

Yes

No

Please give reasons for your views.

It is worrying that some board members commented that they do not want to receive management accounts on a regular basis because they may contain unpublished price sensitive information. And therefore, these management accounts could potential trigger a need to publish price sensitive information. It suggests the board members are not aware of the general obligation under Rule 13.09(1) to publish any price sensitive information as soon as possible, whether or not management accounts or management updates are provided to directors. The lack of awareness of Rule 13.09(1) is a good reason why directors should be required to undergo training every year.



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

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

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

Yes

No

Please give reasons for your views.



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We further recommend this CP be made a Rule by 31 December 2012. Moreover, issuers should disclose in the Chairman's Opening Letter of the Annual Report an explanation of the basis on which the company generates or preserves value over the longer term (the business model) and the strategy for delivering the objectives of the company (corporate strategy). The purpose of placing this information towards the beginning of the Annual Report is to be as transparent as possible for shareowners and other stakeholders, especially those unfamiliar with the company.

12. Directors' Insurance

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

PART II: SHAREHOLDERS

1. Shareholders' General Meetings

A. Notice of Meeting and Bundling of Resolutions

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

Yes

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No

Please give reasons for your views.

There is little reason for listed issuers to bundle resolutions, except in very limited circumstances. Shareowners who actively vote their shares call on listed issuers to discontinue this outdated practice.

B. Voting by Poll

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

C. Shareholders' Approval to Appoint and Remove an Auditor

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

Yes

No

Please give reasons for your views.

The appointment and removal of a company's auditor should be agreed to by shareowners of the listed company.

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

Yes

No

Please give reasons for your views.

The appointment and removal of a company's auditor should be agreed to by shareowners of the listed company.



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

Yes

No

Please give reasons for your views.

D. Directors' Attendance at Meetings

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

Yes

No

Please give reasons for your views.

We further recommend this CP be made a Rule by 31 December 2012.

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

Yes

No

Please give reasons for your views.

We further recommend this CP be made a Rule by 31 December 2012.



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

Yes

No

Please give reasons for your views.

There should also be a mandatory disclosure provision in Appendix 23 stating that issuer must disclose details of attendance not only at general meetings but also regular board meetings of each director by name. This information enables shareowners and other stakeholders to hold directors individually accountable.

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

Yes

No

Please give reasons for your views.

Committee chairs should be available to answer questions from shareowners at the Annual General Meeting as well as any Extraordinary Meetings. Listed issuers should also disclose the history of attendance by committee chairs at past general meetings and board meetings in the Corporate Governance Report. Disclosing this information allows shareowners to spot trends about the attendance record of directors over time.

E. Auditor's Attendance at Annual General Meetings

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

Yes

No

Please give reasons for your views.

The auditor should be available to answer questions from shareowners at the Annual General Meeting as well as any Extraordinary Meetings. However, the listed issuer cannot obviously compel the auditor to attend, but can use an auditor's AGM attendance as a criteria to extend the contract for auditing services.



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2. Shareholders' Rights

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

Yes

No

Please give reasons for your views.

Rights of shareowners should be publicly disclosed.

3. Communication with Shareholders

A. Establishing a Communication Policy

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

Yes

No

Please give reasons for your views.

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B. Publishing Constitutional Documents on Website

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

Yes

No

Please give reasons for your views.



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Because of the importance of the constitutional documents, we recommend these should be publicly disclosed on the listed issuer's website as well as on the HKEx website. Any updates should be uploaded to the company website and HKEx no later than five (5) business days after approval.

C. Publishing Procedures for Election of Directors

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

Yes

No

Please give reasons for your views.

D. Disclosing Significant Changes to Constitutional Documents

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

Yes

No

Please give reasons for your views.

One proposed solution to the problem of interested parties finding out whether significant changes have been made and what these are is having the revised constitutional documents (including track changes like the changes in this HKEx Code of Corporate Governance below) on the company website for one (1) month after those changes have been made. This would allow stakeholders to understand the changes in a timely manner and not pose significant burdens on the company.

PART III: COMPANY SECRETARY

1. Company Secretary's Qualifications, Experience and Training

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

Yes

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No

Please give reasons for your views.

The exchange also needs to provide guidance on the disclosure of qualifications and experience of directors and company secretaries. For example, some individuals claim they have a university degree while not specifically naming the university. Qualifications have been found to be dubious in some cases. Therefore, the exchange needs to consider ways to combat this type of fraud.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

However, there is no global standard about the minimum number of hours of company secretaries training per financial year. Therefore, we don't have a specific number in mind.

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

Yes

No

Please give reasons for your views.



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2. New Section in Code on Company Secretary

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.



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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS

1. Definition of “Announcement” and “Announce”

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

Yes

No

Please give reasons for your views.



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2. Authorised Representatives' Contact Details

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

Yes

No

Please give reasons for your views.

3. Merging Corporate Governance Report Requirements into Appendix 14

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

- End -