

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/cp201406.pdf>

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

1. Do you agree with our proposal to amend the title of Section C.2 of the Code to “Risk management and internal control”?

☐ Yes

☐ No

Please give reasons for your views.

No comment.

2. Do you agree with the proposed amendments to Principle C.2 to define the roles of the board and the management, and state that the management should provide assurance to the board on the effectiveness of the risk management systems? Is the intention of the proposed wording sufficiently clear?

☐ Yes

☒ No

Please give reasons for your views.

1. *The Principle as it is currently is already sufficient for its purposes as a principle. The aim of internal controls is well understood by all issuers to be the mitigation of the risks that threaten the achievement of an issuer's business objectives. It requires no further elaboration of what internal controls are in the Principle itself. Like the UK code, it is unnecessary for the Principle to address the role of "the management" and require the management to provide the assurance. If necessary, such details can be provided elsewhere by way of a guide.*
2. *It has apparently assumed that the board and the management are two distinct and independent bodies for all issuers and have different important roles to play in respect of an issuer's risk management and internal control systems. Also, it has failed to take into account that there may not always be a clear delineation of personnel between the board and the management for all issuers, particularly for issuers of a smaller size. Without a clear delineation between the board and the management, the proposed assurance by "the management" seems to look good on paper but does not add any practical value to enhancing corporate governance of an issuer.*
3. *Although the Consultation Paper recognizes that issuers vary significantly in their individual characteristics, size and complexity of operations, and the nature of the risks and challenges they face, the proposal if implemented will unnecessarily impose administrative and compliance burden and costs to those issuers by requiring them to explain under which aspects of their own individual circumstances, the size and complexity of their operations and the nature of the risks and challenges they face require them to deviate from the Code.*
4. *The proposal has not addressed what "the management" comprises. Unlike the Singapore code which specifically refers to assurance from the issuer's CEO and CFO regarding the effectiveness of the risk management and internal control systems, without a clear definition of what "the management" is, it has not addressed the questions of by whom and how such an assurance can be given (whether collectively or separately by each member of "the management"), in what terms the assurance shall be given and what responsibilities shall be attached to such assurance.*
5. *Even if "the management" can be clearly identified, as the board remains responsible for the overall management and "the management" is normally under the direction of the board, it is difficult to see any enhancement of the practical benefits from the current practice where the board is responsible for ensuring an adequate control system is put in place, and that the proposed assurance is to be given by "the management" under the direction of the board.*

3. Do you agree with our proposal to introduce an amended RBP (C.2.6) to provide that the board may disclose in the Corporate Governance Report that it has received assurance from management on the effectiveness of the issuer's risk management and internal control systems? Is the intention of the proposed wording sufficiently clear?

☐ Yes

☒ No

Please give reasons for your views.

Please refer to our comments to Question 2 above.

4. Do you agree with the proposed amendments to CP C.2.1 to state that the board should oversee the issuer's risk management and internal control systems on an ongoing basis? Is the intention of the proposed wording sufficiently clear?

☐ Yes

☒ No

Please give reasons for your views.

The current practice of an annual review by the board is already sufficient for its intended purposes.

5. Do you agree with our proposal to upgrade to a CP the existing RBP C.2.3, which sets out the matters that the board's annual review should consider?

☐ Yes

☒ No

Please give reasons for your views.

The proposal will impose an unduly onerous disclosure burden on issuers, which does not add value to enhancing corporate governance of the issuers while causing the issuers to incur additional compliance costs. The existing RBP C2.3 shall remain as a recommended best practice.

Further, as the Consultation Paper has recognised, issuers vary significantly in their individual characteristics, size and complexity of operations, and the nature of the risks and challenges they face. If one size does not fit all, it should stay as an RBP to give issuers flexibility.

6. Do you agree with our proposal to upgrade to a CP the existing RBP C.2.4, which sets out the particular disclosures that issuers should make in their Corporate Governance Reports in relation to how they have complied with the internal control CPs during the reporting period?

☐ Yes

☒ No

Please give reasons for your views.

Please refer to our comments to Question 5 above.

7. Do you agree with our proposal to amend the wording of proposed CP C.2.4 to simplify the requirements and remove ambiguous language, and to make clear that the risk management and internal control systems are designed to manage rather than eliminate risks? Is the intention of the proposed wording sufficiently clear?

☐ Yes

☐ No

Please give reasons for your views.

No comment.

8. In relation to proposed CP C.2.4, do you agree with our proposal to upgrade the existing recommendation that issuers disclose their procedures and internal controls for handling and disseminating inside information (Section S., paragraph (a)(ii)), and amend it to include the handling of “other regulatory compliance risks”?

☐ Yes

☒ No

Please give reasons for your views.

No particular issues have been identified in the Consultation Paper to support the existing RBP being insufficient for enhancing corporate governance of the issuers. While it is suggested removing ambiguous language in the CP, the phrase “other regulatory compliance risks” causes ambiguity and extensive and undefined scope of risks to be left in the hands of the issuers to identify and handle.

9. Do you agree with our proposal to upgrade to Mandatory Disclosures the following existing Recommended Disclosures in relation to internal controls (Section S.):

- (a) whether the issuer has an internal audit function;
- (b) how often the risk management and internal control systems are reviewed, the period covered, and where an issuer has not conducted a review during the year, an explanation why not;
- (c) a statement that a review of the effectiveness of the risk management and internal control systems has been conducted and whether the issuer considers them effective and adequate; and
- (d) significant views or proposals put forward by the audit committee?

☐ Yes

☒ No

Please give reasons for your views.

No particular issues have been identified in the Consultation Paper to support the existing RBP being insufficient for enhancing corporate governance of the issuers.

10. Do you agree with our proposal to move the existing recommendation that issuers disclose details of any significant areas of concern (Section S., paragraph (a)(ix)) to a new RBP C.2.7, and to amend the provision to widen its application by removing the reference to areas of concern “which may affect shareholders”?

☐ Yes

☐ No

Please give reasons for your views.

No comment.

11. Do you agree with our proposal to remove RBP C.2.5, which states that issuers should ensure their disclosures provide meaningful information and do not give a misleading impression?

☒ Yes

☐ No

Please give reasons for your views.

12. Do you agree with our proposals to remove the recommendations that issuers include in their Corporate Governance Reports:
- (a) an explanation of how the internal control system has been defined for them (Section S., paragraph (a)(i)); and
 - (b) the directors' criteria for assessing the effectiveness of the internal control system (Section S., paragraph (a)(vii))?

☒ Yes

☐ No

Please give reasons for your views.

13. Do you agree with our proposal to upgrade RBP C.2.6 to a CP (re-numbered C.2.5) and amend it to state that an issuer should have an internal audit function, and issuers without an internal audit function should review the need for one on an annual basis and disclose the reasons for the absence of such function in the Corporate Governance Report? Is the intention of the proposed wording sufficiently clear?

☐ Yes

☒ No

Please give reasons for your views.

The existing RBP shall remain as an RBP as the proposal not only will impose an unduly onerous disclosure burden on issuers, but also add no value to enhancing corporate governance of the issuers other than causing the issuers to incur additional compliance costs.

14. Do you agree with our proposal to introduce new Notes to the proposed CP C.2.5 to clarify that:

- (a) the role of the internal audit function is to carry out the analysis and independent appraisal of the adequacy and effectiveness of an issuer's risk management and internal control systems; and
- (b) a group with multiple listed issuers may share group resources of the holding company to carry out the internal audit function for members of the group?

☐ Yes

☒ No

Is the intention of the proposed wording sufficiently clear? Please give reasons for your views.

We do not see the value of adding the new Notes as proposed.

15. Do you agree with our proposal to amend the existing CP C.2.2 to state that the board's annual review should ensure the adequacy of resources, staff qualifications and experience, training programmes and budget of the issuer's internal audit function (in addition to its accounting and financial reporting functions)?

☐ Yes

☒ No

Please give reasons for your views.

Please refer to our comments to Question 13 above.

16. Do you agree with our proposal to amend Principle C.3 in respect of audit committees and CP C.3.3 in respect of their terms of reference to incorporate “risk management” where appropriate?

☐ Yes

☒ No

Please give reasons for your views.

We agree with the view that risk management should not be put under the remit of the audit committee, as this could stretch its resources and divert its focus. The proposal will impose an unduly onerous burden on the audit committee with additional compliance costs.

17. Do you agree that the matter of establishing a separate board risk committee should be left to issuers to decide in accordance with their own circumstances?

☒ Yes

☐ No

Please give reasons for your views.

Issuers have to take into account their own circumstances in order to consider whether it would be necessary to establish another committee to perform such duties.

18. What would be an appropriate period of time between the publication of the consultation conclusions and the implementation of the amendments set out in the Consultation Paper?

☐ Six months

☐ Nine months

☒ 12 months

☐ Others (please specify:)

Please give reasons for your views.

- End -