

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.

Focus is shifted from internal control as a separate concept to internal control as an integrated part of risk management. Moreover, internal control is most effective when it is integrated with risk management.

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.

Depending on size and complexity of the listed issuer, the Board may engage external consultancy for designing risk management and internal control systems, while company's management is responsible for implementation, hence the new amendment will exclude above approach of working method and limits the choice of wider flexibility offered by existing Principle C.2 the Board is responsible for overall risk management.

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.

Management act under instruction of Board and investor confidence is unlikely to increase because of adding such statement in the CG report.

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.

Most Board will oversee issuer's risk management and internal control systems on an ongoing basis – A GEM board company already need to issue quarterly report so there is already sufficient assurance. Additional wordings seem to impose additional work on issuer on placing additional headcounts on monitoring.

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.

It should be kept at RBP as this may be suitable for large groups but may impose unnecessary burden for small company listed in GEM, hence this should be left to the decision of the listed issuer.

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.

This will give unnecessary burden in reporting, for (e) what constitute "material internal control defects" is open to argument among listed issuer, internal auditor and external auditor. In addition, this will increase cost burden of small listed issuer.

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.

Yes, it should be "manage" and not "eliminate" risk. Intention of proposed wordings is sufficient clear.

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.

Since “inside information” has already been statutory codified and offences are criminalised, listed issuer are well aware of importance timely disclosure of “inside information”. It should be up to listed issuer to decide how to handle disclosure of inside information.

There are a lot of smaller issuers with few staff and making disclosure of procedure and internal control for handling inside information is placing unnecessary burden on small listed issuer with few staff without much help to investor.

Amending it to include “other regulatory compliance risks” is too wide embracing, this includes overseas regulatory compliance which is imposing burden and compliance cost on listed issuer.

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.

It should still be kept at RBP level. For large companies, this may be useful and they can adopt it at their discretion. Mandatory reporting will put unnecessary burden for small companies such as a GEM board company who already did quarterly reporting.

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.

As basic principal in annual, interim, quarterly reporting are “to shareholders”, which includes auditor’s report, this basic principle should be maintained and no sound basis to wider it by removing “which may affect shareholders”.

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.

Yes, the intent of this is attained by other disclosure and phrase of “provide meaningful information” is too vague and not helpful.

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.

These are too ambiguous and do not provide information useful to investor, hence we agree this should be removed.

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.

This will add unnecessary cost burden to small listed issuer. Internal control review done annually should be sufficient.

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.

Yes – wordings in (a) is clear and for (b) large group can share resources for cost effectiveness.

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.

No, for smaller companies which have an internal audit unit, there may only be 1 or 2 staff to handle internal audit and such amendments is likely to impose further burdens on small companies, in principle, small company will likely follow if they think this is appropriate to them, but this should not be mandatory.

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.

Reasons is focus is shifted from Internal Control as separate concept to as integrated part of risk management.

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.

For a small size company with few Directors, Audit Committee should be sufficient and imposing Board Risk Committee may just involve imposing unnecessary burden. For large group with more Directors, it is left to listed issuer to decide if separate board risk committee is suitable for them

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.

Time is required for explanation and preparation by listed issuer.

- End -