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22nd March 2004

The Stock Exchange of Hong Kong Limited,
Listing Unit,
11/F One International Finance Centre,
1 Harbour View Street,
Central, Hong Kong

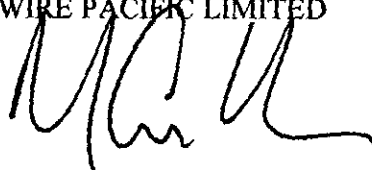
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THE STOCK EXCHANGE
OF HONG KONG LIMITED
LISTING DIVISION

Dear Sirs,

**Draft Code on Corporate Governance Practices
and Corporate Governance Report**

With reference to your exposure of draft Code on Corporate Governance Practices and Corporate Governance Report, I now attach our comments for your consideration.

Yours faithfully,
For SWIRE PACIFIC LIMITED



M. Cubbon
Finance Director

 MY/ry
Encl.

MY/SEHK/letter re comment on draft code of corporate governance practices

Comments on Draft Code on Corporate Governance Practices and Corporate Governance Report

Q. 1. Timing

HKEx has proposed for the Code provisions to be effective for accounting periods commencing on or after 1 January 2005, except for the Code on "Internal Controls" and the disclosure requirements in the Corporate Governance Reporting relating to internal controls which are proposed to be effective for accounting periods commencing on or after 1 July 2005.

On the other hand, the amendments to the Listing Rules issued at the end of February are coming into effect from 31st March 2004, except for the disclosure requirements in the annual and interim reports which will be effective for the accounting period commencing on or after 1 July 2004.

There are a number of overlaps between the Code and the Listing Rules, e.g., the requirements in respect of Audit Committees, the inclusion of poll procedures in circular to shareholders, the disclosure of directors' remuneration on a named basis, and the requirements for INEDs.

As a consequence, there is confusion regarding the effective date of these provisions.

Q2. Presentation and format

1. We welcome the splitting of the Code into "Code Provisions" and "Recommended Best Practices" ("RBP") as this introduces some flexibility in areas where the relevant practice, which may be applicable in other markets, is not appropriate for Hong Kong, or the company is not ready to adopt the practice.

However, the criteria for classifying the practices are not clear. For example, it seems to me that the following should be Code Provisions rather than RBPs:

- A.5.8 "(b) scrutinizing the issuer's performance in achieving agreed corporate goals and objectives, and monitoring the reporting of performance";
- C.3.6 (f) reviewing external auditor's management letter; and
- C.3.6 (g) ensuring that the board provide a timely response to the issues raised in the external auditor's management letter.

On the other hand, the establishment of a nomination committee is only an RBP (A.4.4), but in the Corporate Governance Report, it is referred to in the "Mandatory Disclosure Requirements" section (2(g)).

Furthermore, in some instances, Code Provisions are repeated as RBPs – A.5.1 & A.5.5, A.5.2 & A.5.7, C.2.1 & C.2.3, C.3.2 & C.3.6.

2. Some of the Code Provisions are actually requirements of law or the Listing Rules or accounting standards, e.g. issuing notice of general meetings at least 21 days or 14 days before the meeting (E.1.3); responsibility for preparing the accounts (C.1.2)[*whether or not directors acknowledge this responsibility, they cannot but be responsible for the accounts by approving them and authorizing two directors to sign them!*] There does not seem to be any purpose in setting them out,
3. The Code is unnecessarily lengthy, mainly because there are lots of repetitions. This may in part be due to the desire to set out separately the responsibilities of the chairman, the CEO, directors and the board. For example, many of the provisions in A6 and C.1 are already covered in A.2.3.

Directors will be asked to tick off each Code Provision before they can confirm that the Code has been complied with and the longer it is, the more difficult it will be for them to do so.

4. The Corporate Governance Report is to be prepared by the board of directors and is required to contain a narrative statement indicating overall compliance with and highlighting any deviation from the Code provisions. However, I find it difficult for the board of directors as a whole to confirm the compliance or otherwise of the following provisions:
 - Every director should ensure that he can give sufficient time and attention to the affairs of the issuer and should not accept the appointment if he cannot do so. (A.5.3)
 - Levels of remuneration is sufficient to attract and retain the directors (B.1).

Q3. Ambiguities in wording

The words underlined are ambiguous and need to be clarified:

- A.1 "An issuer should be headed by an effective board..". What is the criteria for effectiveness?

- A.3 "Non-executive directors should be of sufficient calibre...". How can the board judge whether the non-executive directors are of sufficient calibre?
- A.6.2 "The board should have separate and independent access to the issuer's senior management". Should "the board" be "each director"? because "the board" would mean all the directors collectively. "Independent" of what/whom?
- C.2.4 "Issuers should ensure that their disclosures provide meaningful, high-level information..."
- 4.(c)(iv) "details of last shareholders' meeting". What kind of details are to be supplied?
- 4 (d)(i)(aa) "an explanation of how the system of internal control has been defined for the listed issuer"

Others

1. The Stock Exchange agrees that company secretaries have an important role to play in promoting corporate governance standards, but the Code attempts to avoid setting out their responsibilities on the pretext that doing so would lead to a perception that the responsibilities of directors can be shifted onto such individuals. The result is that a number of administrative duties more appropriate for the Company Secretary are shifted to the Chairman, whose role should be "to provide leadership for the board". These are:
 - Drawing up the agenda for each board meeting (A.2.4);
 - Establishing good corporate governance practices and procedures (A.2.5); and
 - Providing effective communication with shareholders and communicating their views to the Board (A.2.8).

The following duties are, however, still vested in the Company Secretary:

- Ensuring that board procedures, and all applicable rules and regulations, are followed (A.1.4);
- Keeping minutes of board meetings and meetings of board committees (A.1.5 and C.3.1).

2. C.1.4. Quarterly report (RBP)

Enough has been said for and against quarterly reporting. Suffice it to say that we are on the side against it, particularly as this RBP asks for the scope of the quarterly reports to be the same as for half-year and annual accounts.

3. A.4.3 INEDs to serve maximum 9 years (RBP)

Whilst I agree that the independence of INEDs might be affected by their having served a long period, whether it does or not very much depends on the integrity of the INED himself. This must be weighed against the value of his contribution towards the company because of his familiarity with its business from having served a long period on the board. This criterion is not in the guidelines for determining an INED's independence set out in Rule 3.13.

4. Board and Audit Committee Minutes

Code Provisions A.1.6 and C.3.1 require minutes to be sent to all directors/members within 14 days. It is the normal practice for minutes to be circulated to executive directors for comment before they are submitted to the chairman for approval and this cannot be accomplished within the 14-day period, particularly when some of the executive directors are traveling. A more reasonable timeframe would be a month.