

April 27, 2004

Our Ref.: ODL/21651/04

The Listing Unit  
The Hong Kong Stock Exchange  
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Dear Sir,

Although it may be later than required, I feel obliged to comment upon the Draft Code on Corporate Governance Practices issued in January as follows:

**Appendix 14 - Code on Corporate Governance Practices, page 7:** The first paragraph should read, "concerning, the responsibilities for direction by the Board of Directors". The reason for this is to ensure that there is a clear distinction between the directors for directing and the senior management responsibility for management.

**Principles of Good Governance, Code Provisions and Recommended Best Practices**

A.1 Principle which suggests that the words, "and its shareholders" be added after "issuer" at the end of this paragraph.

Page 10 - A.1.9 - I suggest as follows: "An issuer should arrange appropriate Directors and Officers insurance cover in respect of legal action against its directors."

**A.2 Chairman and Chief Executive Officer**

Proposed further additions:

A.2.10 The Chairman should devise processes to ensure that the performance of all Directors is evaluated.

A.2.11 The Chairman should ensure that each Director has a development plan to improve on his/her performance.

**Page 14 - A.4.5 add new items (e) and (f):**

(e) "Create development plans for potential Board members, including an induction programme for those appointed."

(f) "If external consultants are used to select potential Board members for short list or final appointment by the Board, the Committee should review and appoint the executive search company and be empowered to negotiate its terms of business."

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### A.5 Responsibilities of Directors

Page 16 - A.5.2 (a) should read "participating in board meetings of the issuer to bring an independent judgement to bear on issues of strategy, policy, performance, accountability, resources, key appointments and standards of conduct." The point is that strategy, policy, performance and accountability are regarded as the key roles of the board by most experts on the subject."

A.5.6 Add at the end of the sentence, "and up date this list annually."

Page 17 - A.5.8 (a) "of the issuer's strategy and policies through independent, constructive and informed comments;"

New Item (c) - "Being accountable for those board subcommittees upon which he may sit as Chairman or member."

Bearing in mind the principle that each Director should be excluded in deciding his own remuneration, it seems somewhat contrary to this principle that Non Executive Directors should have their remuneration decided by other members of the same committee. I would propose that you should follow the UK Code and have the remuneration of Non Executive Directors determined by the Chairman and Executive Directors of the Board and that item (f) on page 20 be amended accordingly.

### Page 43 - Evaluating Performance of the Board

Earlier in indicating that a director's pay should significantly be related to corporate oriented individual performance. It is implicit that director's performance should be evaluated.

I disagree with your premise in paragraph 3 on page 43 that it is impractical for board to evaluate its own performance. Providing a Board has a clear mandate as to its responsibilities and has clear strategy, policy, operational goals and accountability, it will be relatively easy to determine whether the board has achieved what it set out to do. As a first step, the board should be required to have its performance evaluated, not necessarily by itself, but by some third party which would more effectively be able to comment constructively upon the board overall effectiveness. There is no doubt that there is a growing industry in assessment by investment analysts and such credit and rating agencies as Standard & Poors and many executive search companies in evaluating the performance of both directors and the boards themselves. It, therefore, seems appropriate that the board should get accustomed to the idea of getting their own house in order rather than to have a

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third party commented upon board effectiveness and thus perhaps impact upon the company's prospects in the market place by way of share price. Although more education may be needed in this area, it would drastically improve the performance of some Boards and therefore the potential enhancement of their company's share value and that of the reputation of the Hong Kong Stock Exchange as a viable institution promoting corporate governance.

I hope the above comments are constructive and I would like to commend the Stock Exchange upon achieving a good balance between the deficiencies of the previous Code and the excesses UK Code and in some cases that of the United States.

Yours sincerely,

Peter Barrett  
Managing Director  
Organisation Development Ltd.

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