

Appendix 14

Code on Corporate Governance Practices

This Code on Corporate Governance Practices sets out the principles of good corporate governance, and two levels of recommendations: (a) code provisions; and (b) recommended best practices

Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only. Issuers may also devise their own code on corporate governance practices on such terms as they may consider appropriate.

Issuers must state whether they have complied with the code provisions set out in this Code for the relevant accounting period in their interim reports (and summary interim reports, if any) and annual reports (and summary financial reports, if any).

Every issuer must carefully review each code provision set out in this Code and, where the issuer deviates from any of the code provisions, the issuer must give considered reasons:

- (a) in the case of annual reports (and summary financial reports), in the Corporate Governance Report which must be issued in accordance with Appendix 23; and*
- (b) in the case of interim reports (and summary interim reports), either:*
 - (i) by giving considered reasons for each deviation; or*
 - (ii) to the extent that it is reasonable and appropriate, by referring to the Corporate Governance Report in the immediately preceding annual report, and providing details of any changes together with considered reasons for any deviation not reported in that annual report. Such references must be clear and unambiguous and the interim report (or summary interim report) must not only contain a cross-reference without any discussion of the matter.*

In the case of the recommended best practices, issuers are encouraged, but are not required, to state whether they have complied with them and give considered reasons for any deviation.

PRINCIPLES OF GOOD GOVERNANCE, CODE PROVISIONS AND RECOMMENDED BEST PRACTICES

A. DIRECTORS

A.1 The Board

Principle

An issuer should be headed by an effective board which should assume responsibility for leadership and control of the issuer and be collectively responsible for promoting the success of the issuer by directing and supervising the issuer's affairs. Directors should take decisions objectively in the interests of the issuer.

Code Provisions

- A.1.1 The board should meet regularly and board meetings should be held at least four times a year at approximately quarterly intervals. It is expected that such regular board meetings will normally involve the active participation, either in person or through other electronic means of communication, of a majority of directors entitled to be present. Accordingly, a regular meeting does not include the practice of obtaining board consent through the circulation of written resolutions.
- A.1.2 Arrangements should be in place to ensure that, all directors are given an opportunity to include matters in the agenda for regular board meetings.
- A.1.3 Notice of at least 14 days should be given of a regular board meeting to give all directors an opportunity to attend. For all other board meetings, reasonable notice should be given.
- A.1.4 All directors should have access to the advice and services of the company secretary with a view to ensuring that board procedures, and all applicable rules and regulations, are followed.
- A.1.5 Minutes of board meetings and meetings of board committees should be kept by a duly appointed secretary of the meeting and such minutes should be open for inspection at any reasonable time on reasonable notice by any director.

- A.1.6 Minutes of board meetings and meetings of board committees should record in sufficient detail the matters considered by the board and decisions reached, including any concerns raised by directors or dissenting views expressed. Draft and final versions of minutes of board meetings should be sent to all directors for their comment and records respectively, in both cases within a reasonable time after the board meeting is held.
- A.1.7 There should be a procedure agreed by the board to enable directors, upon reasonable request, to seek independent professional advice in appropriate circumstances, at the issuer's expense. The board should resolve to provide separate independent professional advice to directors to assist the relevant director or directors to discharge his/their duties to the issuer.
- A.1.8 If a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board which the board has determined to be material, the matter should not be dealt with by way of circulation or by a committee (except an appropriate board committee set up for that purpose pursuant to a resolution passed in a board meeting) but a board meeting should be held. Independent non-executive directors who, and whose associates, have no material interest in the transaction should be present at such board meeting.

Notes: 1 Directors are reminded of the requirement under rule 13.44 that they must abstain from voting on any board resolution in which they or any of their associates have a material interest and that they shall not be counted in the quorum present at the board meeting. The existing exceptions to the general voting prohibition are currently set out in note 1 to Appendix 3 .

2 Such exceptions to the general voting prohibition should also be taken into account when considering whether a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board. If the relevant exceptions apply, a regular board meeting need not be held. For this purpose, please refer to A.1.1 for the meaning of a regular board meeting.

Recommended Best Practices

- A.1.9 An issuer should arrange appropriate insurance cover in respect of legal action against its directors.
- A.1.10 Board committees should adopt, so far as practicable, the principles, procedures and arrangements set out in A.1.1 to A.1.8.

A.2 Chairman and Chief Executive Officer

Principle

There are two key aspects of the management of every issuer - the management of the board and the day-to-day management of the issuer's business. There should be a clear division of these responsibilities at the board level to ensure a balance of power and authority, so that power is not concentrated in any one individual.

Code Provisions

A.2.1 The roles of chairman and chief executive officer should be separate and should not be performed by the same individual. The division of responsibilities between the chairman and chief executive officer should be clearly established and set out in writing.

Note: Under paragraphs 2(c)(vii) and 2(d) of Appendix 23, issuers must disclose in their Corporate Governance Report the identity of the chairman and the chief executive officer and whether these two roles are segregated and the nature of any relationship (including financial, business, family or other material/relevant relationship(s)), if any, among members of the board and in particular, between the chairman and the chief executive officer.

A.2.2 The chairman should ensure that all directors are properly briefed on issues arising at board meetings.

A.2.3 The chairman should be responsible for ensuring that directors receive adequate information, which must be complete and reliable, in a timely manner.

Recommended Best Practices

A.2.4 One of the important roles of the chairman is to provide leadership for the board. The chairman should ensure that the board works effectively and discharges its responsibilities, and that all key and appropriate issues are discussed by the board in a timely manner. The chairman should be primarily responsible for drawing up and approving the agenda for each board meeting taking into account, where appropriate, any matters proposed by the other directors for inclusion in the agenda. The chairman may delegate such responsibility to a designated director or the company secretary.

A.2.5 The chairman should take responsibility for ensuring that good corporate governance practices and procedures are established.

A.2.6 The chairman should encourage all directors to make a full and active contribution to the board's affairs and take the lead to ensure that the board acts in the best interests of the issuer.

A.2.7 The chairman should at least annually hold meetings with the non-executive directors (including independent non-executive directors) without the executive directors present.

A.2.8 The chairman should ensure that appropriate steps are taken to provide effective communication with shareholders and that views of shareholders are communicated to the board as a whole.

A.2.9 The chairman should facilitate the effective contribution of non-executive directors in particular and ensure constructive relations between executive and non-executive directors.

A.3 Board composition

Principle

The board should have a balance of skills and experience appropriate for the requirements of the business of the issuer. The board should ensure that changes to its composition can be managed without undue disruption. The board should include a balanced composition of executive and non-executive directors (including independent non-executive directors) so that there is a strong independent element on the board, which can effectively exercise independent judgement. Non-executive directors should be of sufficient calibre and number for their views to carry weight.

Notes: 1 Under rule 3.10, every board of directors of a listed issuer must include at least three independent non-executive directors.

2 Guidelines on independence of independent non-executive directors are set out in rule 3.13.

Code Provisions

A.3.1 The independent non-executive directors should be expressly identified as such in all corporate communications that disclose the names of directors of the issuer.

Note: Under paragraph 2(c)(i) of Appendix 23, issuers must disclose the composition of the board, by category of directors, including names of chairman, executive directors, non-executive directors and independent non-executive directors in the Corporate Governance Report.

Recommended Best Practices

A.3.2 An issuer should appoint independent non-executive directors representing at least one-third of the board.

A.3.3 An issuer should maintain on its website an updated list of its directors identifying their role and function and whether they are independent non-executive directors.

A.4 Appointments, re-election and removal

Principle

There should be a formal, considered and transparent procedure for the appointment of new directors to the board. There should be plans in place for orderly succession for appointments to the board. All directors should be subject to re-election at regular intervals. An issuer must explain the reasons for the resignation or removal of any director.

Code Provisions

A.4.1 Non-executive directors should be appointed for a specific term, subject to re-election.

Note: Under paragraph 2(e) of Appendix 23, issuers must disclose the term of appointment of non-executive directors in the Corporate Governance Report.

A.4.2 All directors appointed to fill a casual vacancy should be subject to election by shareholders at the first general meeting after their appointment. Every director, including those appointed for a specific term, should be subject to retirement by rotation at least once every three years.

Notes: 1 The names of all directors submitted for election or re-election must be accompanied by the same biographical details as required for newly appointed directors set out in rule 13.51(2) (including other directorships held in listed public companies in the last three years and other major appointments) to enable shareholders to make an informed decision on their election.

2 If a director resigns or is removed from office, an issuer must comply with the disclosure requirements in rule 13.51(2) and include in its announcement about the director's resignation or removal the reasons given by the director for his resignation (including but not limited to information relating to a relevant director's disagreement with the issuer, if any, and a statement confirming whether or not there are any matters that need to be brought to the attention of shareholders).

Recommended Best Practices

A.4.3 Serving more than nine years could be relevant to the determination of a non-executive director's independence. If an independent non-executive director serves more than 9 years, any further appointment of such independent non-executive director should be subject to a separate resolution to be approved by shareholders. The board should set out to shareholders in the papers accompanying a resolution to elect such an independent non-executive director the reasons they believe that the individual continues to be independent and why he should be re-elected.

A.4.4 Issuers should establish a nomination committee. A majority of the members of the nomination committee should be independent non-executive directors.

A.4.5 The nomination committee should be established with specific written terms of reference which deal clearly with the committee's authority and duties. It is recommended that the nomination committee should discharge the following duties:-

- (a) review the structure, size and composition (including the skills, knowledge and experience) of the board on a regular basis and make recommendations to the board regarding any proposed changes;
- (b) identify individuals suitably qualified to become board members and select or make recommendations to the board on the selection of, individuals nominated for directorships;

- (c) assess the independence of independent non-executive directors; and
- (d) make recommendations to the board on relevant matters relating to the appointment or re-appointment of directors and succession planning for directors in particular the chairman and the chief executive officer.

A.4.6 The nomination committee should make available its terms of reference explaining its role and the authority delegated to it by the board.

Notes: 1 This requirement could be met by making it available on request and by including the information on the issuer's website.

2 Under paragraph 2(g)(i) of Appendix 23, issuers must explain the role of the nomination committee (if any) in the Corporate Governance Report.

A.4.7 The nomination committee should be provided with sufficient resources to discharge its duties.

A.4.8 Where the board proposes a resolution to elect an individual as an independent non-executive director at the general meeting, it should set out in the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting why they believe the individual should be elected and the reasons why they consider the individual to be independent.

A.5 Responsibilities of directors

Principle

Every director is required to keep abreast of his responsibilities as a director of an issuer and of the conduct, business activities and development of that issuer. Given the essential unitary nature of the board, non-executive directors have the same duties of care and skill and fiduciary duties as executive directors.

Note: These duties are summarised in "Non-statutory Guidelines of Directors' Duties" issued by the Companies Registry in January 2004. In determining whether a director has met the requisite standard of care, skill and diligence expected of him, courts will generally have regard to a number of factors. These include the functions that are to be performed by the director concerned, whether the director is a full-time executive director or a part-time non-executive director and the professional skills and knowledge of the director concerned.

Code Provisions

- A.5.1 Every newly appointed director of an issuer should receive a comprehensive, formal and tailored induction on the first occasion of his appointment, and subsequently such briefing and professional development as is necessary, to ensure that he has a proper understanding of the operations and business of the issuer and that he is fully aware of his responsibilities under statute and common law, the Exchange Listing Rules, applicable legal requirements and other regulatory requirements and the business and governance policies of the issuer.
- A.5.2 The functions of non-executive directors should include but should not be limited to the following:
- (a) 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;
 - (b) taking the lead where potential conflicts of interests arise;
 - (c) serving on the audit, remuneration, nomination and other governance committees, if invited; and
 - (d) scrutinising the issuer's performance in achieving agreed corporate goals and objectives, and monitoring the reporting of performance.
- A.5.3 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.5.4 Directors must comply with their obligations under the Model Code set out in Appendix 10 and, in addition, the board should establish written guidelines on no less exacting terms than the Model Code for relevant employees in respect of their dealings in the securities of the issuer. For this purpose, "relevant employee" includes any employee of the issuer or a director or employee of a subsidiary or holding company of the issuer who, because of such office or employment, is likely to be in possession of unpublished price sensitive information in relation to the issuer or its securities.

Recommended Best Practices

A.5.5 All directors should participate in a programme of continuous professional development to develop and refresh their knowledge and skills to help ensure that their contribution to the board remains informed and relevant. The issuer should be responsible for arranging and funding a suitable development programme.

A.5.6 Each director should disclose to the issuer at the time of his appointment, and on a periodic basis, the number and nature of offices held in public companies or organisations and other significant commitments, with the identity of the public companies or organisations and an indication of the time involved. The board should determine for itself how frequently such disclosure should be made.

A.5.7 Non-executive directors, as equal board members, should give the board and any committees on which they serve such as the audit, remuneration or nomination committees the benefit of their skills, expertise and varied backgrounds and qualifications through regular attendance and active participation. They should also attend general meetings and develop a balanced understanding of the views of shareholders.

A.5.8 Non-executive directors should make

a positive contribution to the development of the issuer's strategy and policies through independent, constructive and informed comments.

A.6 Supply of and access to information

Principle

Directors should be provided in a timely manner with appropriate information in such form and of such quality as will enable them to make an informed decision and to discharge their duties and responsibilities as directors of an issuer.

Code Provisions

A.6.1 In respect of regular board meetings, and so far as practicable in all other cases, an agenda and accompanying board papers should be sent in full to all directors in a timely manner and at least 3 days before the intended date of a board or board committee meeting (or such other period as agreed).

A.6.2 Management has an obligation to supply the board and its committees with adequate information in a timely manner to enable it to make informed decisions. The information supplied must be complete and reliable. To fulfil his duties properly a director may not in all circumstances be able to rely purely on what is volunteered by management and further enquiries may be required. Where any director requires more information than is volunteered by management, he should make further enquiries where necessary. The board and each director should have separate and independent access to the issuer's senior management.

Notes: 1 The information provided should include background or explanatory information relating to matters to be brought before the board, copies of disclosure documents, budgets, forecasts and monthly and other relevant internal financial statements. In respect of budgets, any material variance between the projections and actual results must also be disclosed and explained.

2 For the purpose of this Code, "senior management" should refer to the same category of persons as referred to in the issuer's annual report and is required to be disclosed under paragraph 12 of Appendix 16.

A.6.3 All directors are entitled to have access to board papers and related materials. Such papers and related materials should be prepared in such form and quality as will enable the board to make an informed decision on matters placed before it. Where queries are raised by directors, steps must be taken to respond as promptly and fully as possible.

B. REMUNERATION OF DIRECTORS AND SENIOR MANAGEMENT

B.1 The level and make-up of remuneration and disclosure

Principle

An issuer should disclose information relating to its directors' remuneration policy and other remuneration related matters. There should be a formal and transparent procedure for setting policy on executive directors' remuneration and for fixing the remuneration packages for all directors. Levels of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose. No director should be involved in deciding his own remuneration.

Notes: 1 Under paragraph 24B of Appendix 16, issuers are required to give a general description of the emolument policy and long-term incentive schemes of the group as well as the basis of determining the emolument payable to their directors.

2 Under paragraph 24 of Appendix 16, directors' fees and any other reimbursement or emolument payable to a director must be disclosed in full in the annual reports and accounts of the issuer on an individual and named basis.

Code Provisions

B.1.1 Issuers should establish a remuneration committee with specific written terms of reference which deal clearly with its authority and duties. A majority of the members of the remuneration committee should be independent non-executive directors.

B.1.2 The remuneration committee should consult the chairman and/or chief executive officer about their proposals relating to the remuneration of other executive directors and have access to professional advice if considered necessary.

B.1.3 The terms of reference of the remuneration committee should include, as a minimum, the following specific duties: -

- (a) to make recommendations to the board on the issuer's policy and structure for all remuneration of directors and senior management and on the establishment of a formal and transparent procedure for developing policy on such remuneration;

Note: For the purpose of this Code, “senior management” should refer to the same category of persons as referred to in the issuer’s annual report and is required to be disclosed under paragraph 12 of Appendix 16.

- (b) to have the delegated responsibility to determine the specific remuneration packages of all executive directors and senior management, including benefits in kind, pension rights and compensation payments, including any compensation payable for loss or termination of their office or appointment, and make recommendations to the board of the remuneration of non-executive directors. The remuneration committee should consider factors such as salaries paid by comparable companies, time commitment and responsibilities of the directors, employment conditions elsewhere in the group and desirability of performance-based remuneration;

Note: Please refer to the Note to B.1.3(a) of this Code for the definition of “senior management”.

- (c) to review and approve performance-based remuneration by reference to corporate goals and objectives resolved by the board from time to time;
- (d) to review and approve the compensation payable to executive directors and senior management in connection with any loss or termination of their office or appointment to ensure that such compensation is determined in accordance with relevant contractual terms and that such compensation is otherwise fair and not excessive for the issuer;

Note: Please refer to the Note to B.1.3(a) of this Code for the definition of “senior management”.

- (e) to review and approve compensation arrangements relating to dismissal or removal of directors for misconduct to ensure that such arrangements are determined in accordance with relevant contractual terms and that any compensation payment is otherwise reasonable and appropriate; and
- (f) to ensure that no director or any of his associates is involved in deciding his own remuneration.

Note: The remuneration committee shall advise shareholders on how to vote with respect to any service contracts of directors that require shareholders’ approval under rule 13.68.

B.1.4 The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board.

Notes: 1 This requirement could be met by making it available on request and by including the information on the issuer's website.

2 Under paragraph 2(f)(i) of Appendix 23, issuers must explain the role of the remuneration committee (if any) in the Corporate Governance Report.

B.1.5 The remuneration committee should be provided with sufficient resources to discharge its duties.

Recommended Best Practices

B.1.6 A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

B.1.7 Issuers should disclose details of any remuneration payable to members of senior management, on an individual and named basis, in their annual reports and accounts.

Notes: 1 Issuers should disclose details of any remuneration payable to members of senior management. Such disclosure should be to the same standard as that required for directors of issuers under paragraph 24 of Appendix 16.

2 For the purpose of this Code, "senior management" should refer to the same category of persons as referred to in the issuer's annual report and is required to be disclosed under paragraph 12 of Appendix 16.

B.1.8 Where the board resolves to approve any remuneration or compensation arrangements which the remuneration committee has previously resolved not to approve, the board must disclose the reasons for its resolution in its next annual report.

C. ACCOUNTABILITY AND AUDIT

C.1 Financial reporting

Principle

The board should present a balanced, clear and comprehensible assessment of the company's performance, position and prospects.

Code Provisions

C.1.1 Management should provide such explanation and information to the board as will enable the board to make an informed assessment of the financial and other information put before the board for approval.

Note: Issuers are reminded of their obligation to comply with the financial reporting and disclosure requirements set out in the Exchange Listing Rules. Failure to comply with such requirements constitutes a breach of the Exchange Listing Rules.

C.1.2 The directors should acknowledge in the Corporate Governance Report their responsibility for preparing the accounts, and there should be a statement by the auditors about their reporting responsibilities in the auditors' report on the financial statements. Unless it is inappropriate to assume that the company will continue in business, the directors should prepare the accounts on a going concern basis, with supporting assumptions or qualifications as necessary. When the directors are aware of material uncertainties relating to events or conditions that may cast significant doubt upon the issuer's ability to continue as a going concern, such uncertainties should be clearly and prominently set out and discussed at length in the Corporate Governance Report. The Corporate Governance Report should contain sufficient information so as to enable investors to understand the severity and significance of the matters at hand. To the extent that it is reasonable and appropriate, the issuer may refer to the other relevant parts of the annual report. Any such references should be clear and unambiguous and the Corporate Governance Report should not only contain a cross-reference without any discussion of the matter.

C.1.3 The board's responsibility to present a balanced, clear and understandable assessment extends to annual and interim reports, other price-sensitive announcements and other financial disclosures required under the Exchange Listing Rules, and reports to regulators as well as to information required to be disclosed pursuant to statutory requirements.

Recommended Best Practices

C.1.4 An issuer should announce and publish quarterly financial results within 45 days after the end of the relevant quarter, disclosing such information as would enable shareholders to assess the performance, financial position and prospects of the issuer. Any such quarterly financial reports should be prepared using the accounting policies applied to the issuer's half-year and annual accounts.

C.1.5 Once an issuer decides to announce and publish its quarterly financial results, it should continue to adopt quarterly reporting for each of the first 3 and 9 months periods of subsequent financial years. Where the issuer decides not to announce and publish its financial results for a particular quarter, it should publish an announcement to disclose the reason(s) for such decision.

C.2 Internal controls

Principle

The board should ensure that the issuer maintains sound and effective internal controls to safeguard the shareholders' investment and the issuer's assets.

Code Provisions

C.2.1 The directors should at least annually conduct a review of the effectiveness of the system of internal control of the issuer and its subsidiaries and report to shareholders that they have done so in their Corporate Governance Report. The review should cover all material controls, including financial, operational and compliance controls and risk management functions.

Recommended Best Practices

C.2.2 The board's annual review should, in particular, consider:

- (a) the changes since the last annual review in the nature and extent of significant risks, and the issuer's ability to respond to changes in its business and the external environment;
- (b) the scope and quality of management's ongoing monitoring of risks and of the system of internal control, and where applicable, the work of its internal audit function and other providers of assurance;
- (c) the extent and frequency of the communication of the results of the monitoring to the board (or board committee(s)) which enables it to build up a cumulative assessment of the state of control in the issuer and the effectiveness with which risk is being managed;
- (d) the incidence of significant control failings or weakness that has been identified at any time during the period and the extent to which they have resulted in unforeseen outcomes or contingencies that have had, could have had, or may in the future have, a material impact on the issuer's financial performance or condition; and
- (e) the effectiveness of the issuer's processes relating to financial reporting and Listing Rule compliance.

C.2.3 Issuers should disclose as part of the Corporate Governance Report a narrative statement how they have complied with the code provisions on internal control during the reporting period. The disclosures should also include the following items:

- (a) the process that an issuer has applied for identifying, evaluating and managing the significant risks faced by it;
- (b) any additional information to assist understanding of the issuer's risk management processes and system of internal control;

- (c) an acknowledgement by the board that it is responsible for the issuer's system of internal control and for reviewing its effectiveness;
- (d) the process that an issuer has applied in reviewing the effectiveness of the system of internal control; and
- (e) the process that an issuer has applied to deal with material internal control aspects of any significant problems disclosed in its annual reports and accounts.

C.2.4 Issuers should ensure that their disclosures provide meaningful information and do not give a misleading impression.

C.2.5 Issuers without an internal audit function should review the need for one on an annual basis and should disclose the outcome of such review in the issuers' Corporate Governance Report.

C.3 Audit Committee

Principle

The board should establish formal and transparent arrangements for considering how it will apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors. The audit committee established by an issuer pursuant to the Exchange Listing Rules should have clear terms of reference.

Code Provisions

C.3.1 Full minutes of audit committee meetings should be kept by a duly appointed secretary of the meeting (who should normally be the company secretary). Draft and final versions of minutes of the audit committee meetings should be sent to all members of the committee for their comment and records respectively, in both cases within a reasonable time after the meeting.

C.3.2 A former partner of the issuer's existing auditing firm should be prohibited from acting as a member of the issuer's audit committee for a period of 1 year commencing on the date of his ceasing:

- (a) to be a partner of the firm; or
- (b) to have any financial interest in the firm,

whichever is the later.

C.3.3 The terms of reference of the audit committee should include at least the following duties:-

Relationship with the issuer's auditors

- (a) to be primarily responsible for making recommendation to the board on the appointment, reappointment and removal of the external auditor, and to approve the remuneration and terms of engagement of the external auditor, and any questions of resignation or dismissal of that auditor;

Note: Issuers are reminded that rule 13.51(4) requires an announcement to be published when there is a change of auditors. The announcement must also include a statement as to whether there are any matters that need to be brought to holders of securities of the issuer.

- (b) to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process in accordance with applicable standard. The audit committee should discuss with the auditor the nature and scope of the audit and reporting obligations before the audit commences;
- (c) to develop and implement policy on the engagement of an external auditor to supply non-audit services. For this purpose, external auditor shall include any entity that is under common control, ownership or management with the audit firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as part of the audit firm nationally or internationally. The audit committee should report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken;

Review of financial information of the issuer

- (d) to monitor integrity of financial statements of an issuer and the issuer's annual report and accounts, half-year report and, if prepared for publication, quarterly reports, and to review significant financial reporting judgements contained in them. In this regard, in reviewing the issuer's annual report and accounts, half-year report and, if prepared for publication, quarterly reports before submission to the board, the committee should focus particularly on: -
 - (i) any changes in accounting policies and practices;
 - (ii) major judgmental areas;
 - (iii) significant adjustments resulting from audit;
 - (iv) the going concern assumptions and any qualifications;
 - (v) compliance with accounting standards; and
 - (vi) compliance with the Exchange Listing Rules and other legal requirements in relation to financial reporting;
- (e) In regard to (d) above:-
 - (i) members of the committee must liaise with the issuer's board of directors, senior management and the person appointed as the issuer's qualified accountant and the committee must meet, at least once a year, with the issuer's auditors; and
 - (ii) the committee should consider any significant or unusual items that are, or may need to be, reflected in such reports and accounts and must give due consideration to any matters that have been raised by the issuer's qualified accountant, compliance officer or auditors;

Oversight of the issuer's financial reporting system and internal control procedures

- (f) to review the issuer's financial controls, internal control and risk management systems;
- (g) to discuss with the management the system of internal control and ensure that management has discharged its duty to have an effective internal control system;
- (h) to consider any findings of major investigations of internal control matters as delegated by the board or on its own initiative and management's response;
- (i) where an internal audit function exists, to ensure co-ordination between the internal and external auditors, and to ensure that the internal audit function is adequately resourced and has appropriate standing within the issuer, and to review and monitor the effectiveness of the internal audit function;
- (j) to review the group's financial and accounting policies and practices;
- (k) to review the external auditor's management letter, any material queries raised by the auditor to management in respect of the accounting records, financial accounts or systems of control and management's response;
- (l) to ensure that the board will provide a timely response to the issues raised in the external auditor's management letter;
- (m) to report to the board on the matters set out in this code provision; and
- (n) to consider other topics, as defined by the board.

Notes: The following are only intended to be suggestions as to how compliance with the above code provision may be achieved and do not form part of the code provision.

1 The audit committee may wish to consider establishing the following procedure to review and monitor the independence of external auditors: -

- (i) consider all relationships between the issuer and the audit firm (including the provision of non-audit services);*

- (ii) *seek from the audit firm, on an annual basis, information about policies and processes for maintaining independence and monitoring compliance with relevant requirements, including current requirements regarding rotation of audit partners and staff; and*
 - (iii) *meet with the auditor, at least annually, in the absence of management, to discuss matters relating to its audit fees, any issues arising from the audit and any other matters the auditor may wish to raise.*
- 2 *The audit committee may wish to consider agreeing with the board the issuer's policies relating to the hiring of employees or former employees of the external auditors and monitor the application of such policies. The audit committee should then be in a position to consider whether in the light of this there has been any impairment or appearance of impairment, of the auditor's judgement or independence in respect of the audit.*
- 3 *The audit committee would normally be expected to ensure that the provision by an external auditor of non-audit services does not impair the external auditor's independence or objectivity. When assessing the external auditor's independence or objectivity in relation to the provision of non-audit services, the audit committee may wish to consider:*
- (i) *whether the skills and experience of the audit firm make it a suitable supplier of the non-audit services;*
 - (ii) *whether there are safeguards in place to ensure that there is no threat to objectivity and independence in the conduct of the audit resulting from the provision of such services by the external auditor;*
 - (iii) *the nature of the non-audit services, the related fee levels and the fee levels individually and in aggregate relative to the audit firm; and*
 - (iv) *the criteria which govern the compensation of the individuals performing the audit.*
- 4 *For further guidance on the duties of an audit committee, issuers may refer to the "Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence" issued by the Technical Committee of the International Organization of Securities Commissions in October 2002 and "A Guide for Effective Audit Committees" published by the Hong Kong Society of Accountants (as it was then known) in February 2002. Issuers may also adopt the terms of reference set out in those guides, or they may adopt any other comparable terms of reference for the establishment of an audit committee.*

C.3.4 The audit committee should make available its terms of reference, explaining its role and the authority delegated to it by the board.

- Notes:*
- 1 *This requirement could be met by making it available on request and by including the information on the issuer's website.*
 - 2 *Under paragraph 2(i)(i) of Appendix 23, issuers must explain the role of the audit committee in the Corporate Governance Report.*

C.3.5 Where the board disagrees with the audit committee's view on the selection, appointment, resignation or dismissal of the external auditors, the issuer should include in the Corporate Governance Report a statement from the audit committee explaining its recommendation and also the reason(s) why the board has taken a different view.

C.3.6 The audit committee should be provided with sufficient resources to discharge its duties.

Recommended Best Practices

C.3.7 The terms of reference of the audit committee should also require the audit committee:

- (a) to review arrangements by which employees of the issuer may, in confidence, raise concerns about possible improprieties in financial reporting, internal control or other matters. The audit committee should ensure that proper arrangements are in place for the fair and independent investigation of such matters and for appropriate follow-up action; and
- (b) to act as the key representative body for overseeing the issuer's relation with the external auditor.

D. DELEGATION BY THE BOARD

D.1 Management functions

Principle

An issuer should have a formal schedule of matters specifically reserved to the board for its decision. The board should give clear directions to management as to the matters that must be approved by the board before decisions are made on behalf of the issuer.

Code Provisions

D.1.1 When the board delegates aspects of its management and administration functions to management, it must at the same time give clear directions as to the powers of management, in particular,

with respect to the circumstances where management should report back and obtain prior approval from the board before making decisions or entering into any commitments on behalf of the issuer.

Note: The board should not delegate matters to a board committee, executive directors or management to an extent that would significantly hinder or reduce the ability of the board as a whole to discharge its functions.

D.1.2 An issuer should formalise the functions reserved to the board and those delegated to management. It should review those arrangements on a periodic basis to ensure that they remain appropriate to the needs of the issuer.

Note: Under paragraph 2(c)(iv) of Appendix 23, issuers must include in their Corporate Governance Report a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management.

Recommended Best Practices

D.1.3 An issuer should disclose the division of responsibility between the board and management to assist those affected by corporate decisions to better understand the respective accountabilities and contributions of the board and management.

D.1.4 Directors should clearly understand delegation arrangements in place. To that end, issuers should have formal letters of appointment for directors setting out the key terms and conditions relative to their appointment.

D.2 Board Committees

Principle

Board committees should be formed with specific written terms of reference which deal clearly with the committees' authority and duties.

Code Provisions

D.2.1 Where board committees are established to deal with matters, the board should prescribe sufficiently clear terms of reference to enable such committees to discharge their functions properly.

D.2.2 The terms of reference of board committees should require such committees to report back to the board on their decisions or recommendations, unless there are legal or regulatory restrictions on their ability to do so (such as a restriction on disclosure due to regulatory requirements).

E. COMMUNICATION WITH SHAREHOLDERS

E.1 Effective communication

Principle

The board should endeavour to maintain an on-going dialogue with shareholders and in particular, use annual general meetings or other general meetings to communicate with shareholders and encourage their participation.

Code Provisions

E.1.1 In respect of each substantially separate issue at a general meeting, a separate resolution should be proposed by the chairman of that meeting

Note: An example of a substantially separate issue is the nomination of persons as directors. Accordingly, each such person should be nominated by means of a separate resolution.

E.1.2 The chairman of the board should attend the annual general meeting and arrange for the chairmen of the audit, remuneration and nomination committees (as appropriate) or in the absence of the chairman of such committees, another member of the committee or failing this his duly appointed delegate, to be available to answer questions at the annual general meeting. The chairman of the independent board committee (if any) should also be available to answer questions at any general meeting to approve a connected transaction or any other transaction that is subject to independent shareholders' approval.

E.2 Voting by Poll

Principle

The issuer should regularly inform shareholders of the procedure for voting by poll and ensure compliance with the requirements about voting by poll contained in the Exchange Listing Rules and the constitutional documents of the issuer.

Code Provisions

- E.2.1 The chairman of a meeting should ensure disclosure in the issuer's circulars to shareholders of the procedures for and the rights of shareholders to demand a poll in compliance with the requirements about voting by poll contained in rule 13.39(4). In particular, pursuant to rule 13.39(3), the chairman of a meeting and/or directors who, individually or collectively, hold proxies in respect of shares representing 5% or more of the total voting rights at a particular meeting shall demand a poll in certain circumstances where, on a show of hands, a meeting votes in the opposite manner to that instructed in those proxies. If a poll is required under such circumstances, the chairman of the meeting should disclose to the meeting the total number of votes represented by all proxies held by directors indicating an opposite vote to the votes cast at the meeting on a show of hands.
- E.2.2 The issuer should count all proxy votes and, except where a poll is required, the chairman of a meeting should indicate to the meeting the level of proxies lodged on each resolution, and the balance for and against the resolution, after it has been dealt with on a show of hands. The issuer should ensure that votes cast are properly counted and recorded.
- E.2.3 The chairman of a meeting should at the commencement of the meeting ensure that an explanation is provided of: -
- (a) the procedures for demanding a poll by shareholders before putting a resolution to the vote on a show of hands; and
 - (b) the detailed procedures for conducting a poll and then answer any questions from shareholders whenever voting by way of a poll is required.