



The Stock Exchange of Hong Kong Limited

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

Our Ref: MD20111028-043

28 October 2011

To: Main Board Listed Issuers (Attn: Authorised Representatives)
GEM Listed Issuers (Attn: Authorised Representatives)
Market practitioners

Dear Sirs

Publication of Consultation Conclusions and Listing Rule Amendments on Review of the Corporate Governance Code and Associated Listing Rules

We have published today the Consultation Conclusions on Review of the Corporate Governance Code (“Code”) and Associated Listing Rules.

The consultation conclusions are available on the HKEx website at <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010124cc.pdf>.

Rule and Code adopted and implementation dates

Given the broad market support, the Exchange adopted most of the proposals outlined in the Consultation Paper, subject to certain modifications as set out in the Consultation Conclusions.

The feedback from some respondents indicated that they did not fully appreciate the “comply or explain” principle. Some appeared to think of CPs and/or RBPs as mandatory requirements. We therefore explained in the Consultation Conclusions that to provide a sound regulatory framework appropriate for our market and maintain a high standard of corporate governance, our approach is to adopt a combination of Rules, Code Provisions (“CPs”) and Recommended Best Practices (“RBPs”). This combination is designed to give flexibility to issuers and to protect investors and the integrity of the market.

We clarify that for Rules, the required standard of corporate governance is mandatory for all issuers and breaches may lead to sanctions. For CPs, an issuer is allowed the flexibility to either adopt or if it does not, explain the reasons for its decision in the Corporate Governance Report. This is known as the “comply or explain” principle. If the issuer does not comply with the CP, it is not a breach of the Rules and there is no sanction. For RBPs, the standard of corporate governance is set by specifying desirable best practices and an issuer is encouraged to comply. If it does not comply, an issuer does not need to explain. We have set out the following in the introduction of the Code:

We have therefore included a new section in the Code introduction to clarify the purpose of CPs and RBPs:

“What is “comply or explain”?”

The Code sets out a number of “principles” followed by code provisions and recommended best practices. It is important to recognise that the code provisions and recommended best practices are not mandatory rules. The Exchange does not envisage a “one size fits all” approach. Deviations from code provisions are acceptable if the issuer considers there are more suitable ways for it to comply with the principles.

Therefore the Code permits greater flexibility than the rules, reflecting that it is impractical to define in detail the behaviour necessary from all issuers to achieve good corporate governance. To avoid “box ticking”, issuers must consider their own individual circumstances, the size and complexity of their operations and the nature of the risks and challenges they face. Where an issuer considers a more suitable alternative to a code provision exists, it should adopt it and give reasons. However, the issuer must explain to its shareholders why good corporate governance was achieved by means other than strict compliance with the code provision.

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Shareholders should not consider departures from code provisions and recommended best practices as breaches. They should carefully consider and evaluate explanations given by issuers in the “comply or explain” process, taking into account the purpose of good corporate governance.

An informed, constructive dialogue between issuers and shareholders is important to improving corporate governance.”

Most of our changes are CPs, whilst Rules and RBPs only form a small percentage.

We do not expect issuers to treat CPs and RBPs as Rules. The main rationale for adopting CPs and RBPs instead of Rules is that it is not possible to define good corporate governance in all circumstances. The best approach for one issuer may not be suitable for another. We believe every issuer should carefully consider the corporate governance practice that best suits it and explain this choice in its Corporate Governance Report.

The implementation dates are as follows:

- most Rule amendments will be effective on 1 January 2012;
- Code and certain Rules will be effective on 1 April 2012;
- new Rule requiring the issuer to appoint independent non-executive directors representing at least one-third of the board must be complied with by 31 December 2012; and
- Rule requiring company secretary training will be staggered according to the date of appointment of an individual as company secretary of an issuer.

In its first interim/half year or annual report covering a period after 1 April 2012, the issuer must state, in that report, whether it has, for that period, complied with the CPs in the revised Code as well as those of the former Code. Issuers may adopt the revised Code at an earlier date than 1 April 2012.

A summary of the Rules and Code adopted and their implementation dates are set out in the attached Table A. Except for the Rules and Code amendments specified in Table A, all other Rule amendments will be effective on 1 January 2012 and all other Code amendments will be effective on 1 April 2012.

The amendments are available on the HKEx website at “Rules & Regulations - Rules and Guidance on Listing Matters - Amendments to Main Board Listing Rules” and “Rules & Regulations – Rules and Guidance on Listing Matters – Amendments to GEM Listing Rules”. Re-printed pages of the Listing Rules will be distributed shortly.

If you have any questions, please contact your case officers.

Yours faithfully,
For and on behalf of
The Stock Exchange of Hong Kong Limited

[Signed]

Mark Dickens JP
Head of Listing

Encl. Table A

Table A

	Subject and Relevant Rules/Code	Summary of the Rules and Code Adopted	Implementation Date
1.	Directors' duties Main Board Rule (MB R) 3.08, GEM Rule (GEM R) 5.01	Expanded Rule 3.08 to emphasise directors' duties. The Rule now requires directors to take an active interest in the issuer's affairs and obtain a general understanding of its business and follow up anything untoward that comes to their attention. Delegating their functions is permissible but does not absolve them from their responsibilities or from applying the required levels of skill, care and diligence. It also cautions that directors failing to discharge their duties and responsibilities may be disciplined by the Exchange and may attract civil and/or criminal liabilities. Introduced a Note to Rule 3.08 providing guidance to directors referencing the Companies Registry's "A Guide on Directors' Duties" and the Hong Kong Institute of Directors' guidelines for directors.	<i>1 January 2012</i>
2.	Directors' time commitments Code¹: A.1 Principle, new CP A.6.6	Introduced a new Principle in the Code that the board should regularly review the contribution by a director to performing his responsibilities to the issuer, and whether he is spending sufficient time performing them. Also amended the Code to include a CP that directors should inform the issuer of any change to their significant commitments in a timely manner.	<i>1 April 2012</i>
3.	Directors' training New CP A.6.5, and new mandatory disclosure requirement under Paragraph I(i) of the Code	Revised and upgraded a RBP to a CP on directors' training. Also introduced a Note to the CP stating that directors should provide records of training they received to issuers. Introduced a requirement that the issuer must disclose in its Corporate Governance Report how directors complied with the CP on training.	<i>1 April 2012</i>
4.	INEDs to form one-third of board	Introduced a Rule that at least one-third of an issuer's board should be independent non-executive directors (INEDs). Issuers must	<i>By 31 December 2012</i>

¹ Although the wording of the Main Board Code (Appendix 14) and the GEM Code (Appendix 15) are not identical, the paragraph numberings in both Codes are the same.

	Subject and Relevant Rules/Code	Summary of the Rules and Code Adopted	Implementation Date
	MB Rs 3.10A and 3.11, GEM Rs 5.05A and 5.06	comply with the Rule by 31 December 2012. Also introduced a Rule to allow an issuer a three-month period to appoint a sufficient number of INEDs to comply with the one-third Rule after failing to meet the requirement.	
5.	An INED who has served nine years New CP A.4.3	Upgraded to a CP the RBP recommending shareholders vote on a separate resolution to retain an INED who has served on the board for more than nine years. Also, an issuer should include the reasons why the board considers the INED independent in the circular nominating him for election.	<i>1 April 2012</i>
6.	Board committees		
	A. Remuneration committee MB Rs 3.25 to 3.27, GEM Rs 5.34 to 5.36, new CPs B.1.1 to B.1.4 and RBPs B.1.6 to B.1.8, new mandatory disclosure requirement under Paragraph L(d)(i) of the Code	Introduced new Rules, requiring: (i) issuers to establish a remuneration committee with a majority of INED members; (ii) an INED as chairman of remuneration committee; (iii) written terms of reference for the remuneration committee; (iv) an issuer that fails to comply with these Rules to immediately announce its reasons for not doing so and any other relevant details. The issuer will have a three-month period to rectify its non-compliance; and (v) the remuneration committee to disclose in the Corporate Governance Report which of the two models it has adopted. Amended the CPs to: (i) state that professional advice made available to a remuneration committee should be independent; (ii) accommodate a model where the remuneration committee performs an advisory role to the board, with the board retaining the final authority to approve executive directors' and senior management's remuneration; (iii) remove the term "performance-based" from the CP describing executive directors'	<i>1 April 2012</i>

	Subject and Relevant Rules/Code	Summary of the Rules and Code Adopted	Implementation Date
		<p>and senior management's remuneration; and</p> <p>(iv) make the remuneration committee's terms of reference available on both the issuer's and the HKEx websites.</p>	
	<p>B. Nomination committee</p> <p>New CPs A.5.1 to A.5.5, new mandatory disclosure requirement under Paragraph L(d)(ii) of the Code</p>	<p>Upgraded RBPs to CPs (with some amendments) to enhance the nomination committee's role. These CPs state that an issuer should:</p> <p>(i) establish a nomination committee with a majority of INEDs, chaired by an INED or the board chairman;</p> <p>(ii) establish a nomination committee with written terms of reference that performs the duties described;</p> <p>(iii) include, as one of the nomination committee's duties, a review of the structure, size and composition of the board at least annually to complement the issuer's corporate strategy;</p> <p>(iv) make the nomination committee's terms of reference available on both the issuer's and the HKEx websites;</p> <p>(v) ensure a nomination committee has sufficient resources; and</p> <p>(vi) enable a nomination committee to seek independent professional advice at the issuer's expense.</p>	<p><i>1 April 2012</i></p>
	<p>C. Corporate governance functions</p> <p>New CPs D.3.1 and D.3.2, new mandatory disclosure requirement under Paragraph L(d)(iii) of the Code</p>	<p>Introduced a new CP stating that the board should be responsible for corporate governance. Also introduced new CPs stating that an issuer should establish terms of reference on duties that should be performed by the board or committees delegated by the board.</p> <p>Introduced a new Rule requiring issuers to disclose the corporate governance policy and duties performed in the Corporate Governance Report.</p>	<p><i>1 April 2012</i></p>
	<p>D. Audit committee</p> <p>New CPs C.3.7 and C.3.3(e)(i), and RBP C.3.8. New mandatory disclosure</p>	<p>Upgraded to a CP the RBP stating that an audit committee's terms of reference should include arrangements for employees to raise concerns about financial reporting improprieties.</p> <p>Amended the relevant CP to state that an audit</p>	<p><i>1 April 2012</i></p>

	Subject and Relevant Rules/Code	Summary of the Rules and Code Adopted	Implementation Date
	requirement under Paragraph L(d)(iv) of the Code	committee should meet the external auditor at least twice a year. Introduced a new RBP recommending the audit committee establish a whistleblowing policy and system.	
7.	Disclosure of senior management remuneration by band New CP B.1.5	Introduced a CP stating that senior management remuneration should be disclosed by band.	<i>1 April 2012</i>
8.	Disclosure of chief executive's remuneration MB R Paragraph 24.5 of Appendix 16, GEM R Note 6 to 18.28	Amended the Rules to require issuers to disclose the remuneration of a chief executive who is not a director.	<i>1 January 2012</i>
9.	Board evaluation New RBP B.1.9	Introduced an RBP recommending the board to conduct a regular evaluation of its performance.	<i>1 April 2012</i>
10.	Board meetings		
	A. Directors' attendance at board meetings New CP A.1.7, new mandatory disclosure requirement under Paragraph I(c) of the Code	Clarified that, subject to the issuer's constitutional documents and the laws and regulations of its place of incorporation, it may count attendance by electronic means (including telephonic or video-conferencing) as attendance at a physical board meeting.	<i>1 April 2012</i>
	B. Removing 5% threshold for voting on a resolution in which a director has an interest MB R 13.44, GEM R 17.48A	Amended the Rules to remove the 5% exemption for voting by a director on a board resolution in which he has an interest.	<i>1 January 2012</i>
11.	Chairman and chief executive New CPs A.2.4 to	Upgraded all the RBPs in A.2 of the Code to CPs with minor amendments. The CPs place greater emphasis on the roles and responsibilities of the	<i>1 April 2012</i>

	Subject and Relevant Rules/Code	Summary of the Rules and Code Adopted	Implementation Date
	A.2.9	chairman.	
12.	Notifying directorship change and disclosure of directors' information (including the chief executive) MB R 13.51, GEM R 17.50 New CP A.3.2	Amended the Rules to require issuers to: (i) disclose information on the retirement or removal of a director or supervisor; (ii) disclose information on the appointment, resignation, re-designation, retirement or removal of a chief executive; (iii) disclose director's information on all civil judgments of fraud, breach of duty, or other misconduct involving dishonesty; and (iv) clarify that the sanctions referred to in Rule 13.51B(3)(c) are those made against the issuer. Also upgraded the RBP to a CP stating that a list of directors should be published on the issuer's website and added that it should also be published on the HKEx website.	<i>1 January 2012</i> <i>1 April 2012</i>
13.	Providing monthly information to board members to enable them to discharge their duties New CP C.1.2	Introduced a CP stating that management should provide monthly updates to board members giving a balanced and understandable assessment of the issuer's performance, position and prospects in sufficient detail to enable them to discharge their duties under Rule 3.08 and Chapter Added a Note stating that the monthly updates may include information such as monthly management accounts and management updates. The Note was moved from CP A.6.2 (re-numbered A.7.2) and revised.	<i>1 April 2012</i>
14.	Next day disclosure for a director of the issuer's subsidiaries exercising an option for shares in the issuer MB R 13.25A, GEM R 17.27A	Amended the Rules to remove the requirement for issuers to publish a Next Day Disclosure Form following the exercise of an option for shares in the issuer by a director of its subsidiaries. Amended the Rules so that options for shares in the issuer exercised by a director of a subsidiary only triggers an announcement if the change in its share capital, individually or when aggregated with other events, is 5% or more since its last Monthly Return.	<i>1 January 2012</i>
15.	Disclosing long term basis on which an issuer generates	Introduced a CP stating that the annual report should include an explanation of the basis on which the company generates or preserves value	<i>1 April 2012</i>

	Subject and Relevant Rules/Code	Summary of the Rules and Code Adopted	Implementation Date
	or preserves business value New CP C.1.4	over the longer term and the strategy for delivering the objectives of the company.	
16.	Directors' insurance New CP A.1.8	Upgraded to a CP the RBP stating that an issuer should arrange appropriate insurance cover for directors.	<i>1 April 2012</i>
17.	Shareholders' general meetings		
	A. Notice of meeting and bundling of resolutions (New CP E.1.1)	Clarified that issuers should avoid "bundling" resolutions and, where they are "bundled", explain the reasons and material implications in the notice of meeting.	<i>1 April 2012</i>
	B. Voting by poll MB R 13.39(4) and (5) GEM R 17.47(4) and (5)	<u>Exception for procedural and administrative matters</u> Amended the Rules to allow a chairman at a general meeting to exempt certain prescribed procedural and administrative matters from a vote by poll. <u>Clarification of disclosure in poll results</u> Amended the Rules to clarify the disclosure requirements regarding poll results. <u>Timing of explanation of polling procedures</u> Deleted the words "at the commencement of the meeting" from the CP that states when an explanation for the detailed procedures should be given.	<i>1 January 2012</i> <i>(For meetings held on or after 1 January 2012)</i>
	C. Shareholders' approval to appoint and remove an auditor MB R 13.88, GEM R 17.100	Introduced a new Rule to require shareholders' approval at a general meeting of any proposal to appoint or remove an auditor before the term of his office. The Rule requires the issuer to send a circular containing any written representation from the auditor to shareholders and the auditor must be allowed to make a written and/or verbal representation at the general meeting to remove him.	<i>1 January 2012</i>
	D. Directors'	Upgraded to a CP the RBP stating that	<i>1 April 2012</i>

	Subject and Relevant Rules/Code	Summary of the Rules and Code Adopted	Implementation Date
	attendance at meetings New CPs A.6.7 and A.6.8, new mandatory disclosure requirement under Paragraph (I)(c) of the Code New CP E.1.2	non-executive directors, including INEDs, should attend board, committee and general meetings and contribute to the issuer's strategy and policies. Introduced a requirement that issuers must disclose details of the attendance at general meetings of each director by name in its Corporate Governance Report. Also revised the CP on attendance at the annual general meeting (AGM) of the chairman of the board and the chairmen of the audit, remuneration and nomination committees to include chairmen of "any other committees".	
	E. Auditor's attendance at AGMs New CP E.1.2	Introduced a CP stating that the issuer's management should ensure the external auditors attend the AGM to answer questions about the conduct of the audit, the preparation and content of the auditors' report, accounting policies and auditor independence.	<i>1 April 2012</i>
18.	Shareholders' rights New mandatory disclosure requirements under Paragraph O of the Code	An issuer must disclose the following "shareholder rights" information in its Corporate Governance Report that was previously a recommended disclosure: (i) the way in which shareholders can convene an extraordinary general meeting; (ii) the procedures for sending enquiries to the board (with sufficient contact details); and (iii) the procedures for making proposals at shareholders' meetings (with sufficient contact details).	<i>1 April 2012</i>
19.	Communication with shareholders		
	A. Establishing a communication policy New CP E.1.4	Introduced a CP stating that issuers should establish a shareholder communication policy.	<i>1 April 2012</i>
	B. Publishing constitutional documents on website	Introduced a Rule requiring an issuer to publish an updated and consolidated version of its constitutional documents on its own website and the HKEx website.	<i>1 April 2012</i>

	Subject and Relevant Rules/Code	Summary of the Rules and Code Adopted	Implementation Date
	MB R 13.90, GEM R 17.102		
	C. Publishing procedures for election of directors MB R 13.51D, GEM R 17.50C	Introduced a Rule requiring an issuer to publish on its website the procedures shareholders can use to propose a person for election as a director.	<i>1 April 2012</i>
	D. Disclosing significant changes to constitutional documents New mandatory disclosure requirement under Paragraph P of the Code	An issuer must disclose any significant change to the issuer's constitutional documents during the year in its Corporate Governance Report. Previously this was a recommended disclosure.	<i>1 April 2012</i>
20.	Company secretary's qualifications, experience and training MB Rs 3.28, 3.29, and 19A.16, GEM Rs 5.14, 5.15 and 25.11	<p>Moved the company secretary's qualifications and experience requirements from Rule 8.17 to a new section in Chapter 3.</p> <p>Set out in a Note to the Rule the academic or professional qualifications that the Exchange would consider acceptable. They include a member of Hong Kong Institute of Chartered Secretaries, a lawyer or an accountant. Also clarified in a Note the factors the Exchange would consider in assessing "relevant experience". These include the length of employment with an issuer, training received, familiarity with the Rules and relevant laws, and qualifications in other jurisdictions.</p> <p>Removed the requirement for a company secretary to be ordinarily resident in Hong Kong.</p> <p>Repealed Rule 19A.16 - to make the requirements for company secretaries of Mainland issuers the same as for other issuers.</p> <p>Introduced a Rule requiring company secretaries to have 15 hours' professional training in a financial year. Provided transitional arrangements for implementing this Rule.</p>	<p><i>1 January 2012</i></p> <p><i>(Except for company secretary training which has specified implementation dates)</i></p>

	Subject and Relevant Rules/Code	Summary of the Rules and Code Adopted	Implementation Date
21.	<p>New section in Code on Company Secretary</p> <p>New Section F of the Code</p>	<p>Introduced a new section to the Code (Section F) setting out the role and responsibilities of a company secretary.</p> <p>Introduced new CPs to this section stating that:</p> <ul style="list-style-type: none"> (i) the company secretary should be an employee of the issuer. If the issuer engages an external service provider, it should disclose the identity of the person with sufficient seniority at the issuer for the external provider to contact; (ii) the selection, appointment, or dismissal of the company secretary should be a board decision; (iii) the company secretary should report to the board chairman and/or the chief executive; and (iv) all directors should have access to the advice and services of the company secretary to ensure that board procedures, and all applicable laws, rules and regulations are followed. 	<i>1 April 2012</i>