

17 March 2011

Corporate Communications Department  
Hong Kong Exchanges and Clearing Limited  
12/F One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

中電控股有限公司  
CLP Holdings Limited

香港九龍亞皆老街147號  
147 Argyle Street, Kowloon, Hong Kong

電話 Tel (852) 2678 8111  
傳真 Fax (852) 2760 4448  
網址 Website [www.clpgroup.com](http://www.clpgroup.com)

Dear Sirs,

**Consultation Paper on Review of The Code on  
Corporate Governance Practices and Associated Listing Rules**

We attached our response to the Consultation.

In doing so, we ought to express our clear and overall support for the changes which the Exchange has proposed, albeit that we may have differences of opinion, on occasion substantial, on a number of these proposals. This is only to be expected given the complexity of the matters under review and the wide-ranging and numerous questions on which responses have been sought.

We have also welcomed the process of consultation which has accompanied these proposals. Whether this was in the form of the extensive “soft” consultation which preceded the issue of the Consultation Paper, the quality of the Consultation Paper itself or the work which the Exchange’s management has undertaken to brief and communicate widely following the issue of the Consultation Paper, we believe that the Exchange has demonstrated a willingness to engage in an open and constructive debate on these matters. We hope that the responses to the Consultation Paper itself will be considered in the same spirit.

There are two particular issues which we wish to address and which were not singled out in the Consultation Paper.

The first is our suggestion that the Code might benefit from a more extensive introduction on the rationale, spirit and flexibility of the Code, in line with that included under the UK Corporate Governance Code under the heading “comply or explain”. The Hong Kong Code does not have a similar explanation. The fact that more than 99% of issuers complied with 41 or more of the 45 CPs in 2009 might be taken as possibly a successful box ticking exercise, rather than genuine, substantive compliance on such an overwhelming scale. Although this may not have great effect, there might be some merit in at least reminding issuers that the Exchange does not contemplate a “one size fits all” approach to corporate governance and that deviations from the Code are perfectly acceptable, and possibly even desirable, in circumstances where an issuer considers that more suitable alternative arrangements exist and is prepared to explain these. In that respect, even the UK Corporate Governance Code is misleading in using phrase “comply or explain” – in the case of the Code (this is something which makes it distinct from the Rules) deviation accompanied by a reasonable explanation is just as much compliance as a tick in a “box” as drafted.

The second point which we wish to raise relates to the effective date of the introduction of the revised Code. We noted from a recent presentation given by HKEx management to the HKICS that the Rule and Code changes may be effective in Q3 or Q4 2011. We would suggest that the changes should be announced in Q3, and take effect from 1 January 2012. The reason for this suggestion is not to delay the coming into effect of these reforms. Instead, it is to avoid the situation where these changes, some of which are substantial and important, come into effect part way through a calendar year, meaning that issuers reporting in Q1 2012 in respect of the 2011 financial year will likely be obliged to report compliance up to the change date and thereafter partial non-compliance for the remainder of 2011. This is probably not what the Exchange may envisage. If the effective date is 1 January 2012, this will allow issuers to aim for full compliance with the amended Code throughout 2012, and to so report in their annual reports 2012. We know that a similar approach is adopted with regard to the introduction of revised accounting standards – which would not normally take effect other than at the end of a financial year.

The length of the Consultation and multiplicity of the questions has meant that, on occasions, our answers may be a little brief. We will be pleased to discuss these matters further and to explain any points on which our views are not sufficiently clear.

Once again, we thank the Exchange for the work that lies behind this Consultation and support the intention to improve the Code which is envisaged.

Yours faithfully,

  
Peter W. Goodland  
Group Executive Director – Strategy

  
April Chan  
Company Secretary

Encl.



## 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/cp2010124.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

### CHAPTER 1: INTRODUCTION

#### Plain Writing Amendments

Question 1. Do you have any comments on the plainer writing amendments? Do you consider any part(s) of the plainer writing amendments will have unintended consequences?

Yes

No ✓

Please give reasons for your views.

### CHAPTER 2: PROPOSED SUBSTANTIVE AMENDMENTS

#### PART I: DIRECTORS

##### 1. Directors' Duties and Time Commitments

Question 2. Do you agree with our proposed change to Rule 3.08 to clarify the responsibilities the Exchange expects of directors?

Yes ✓

No

Please give reasons for your views.

*Provided that the Note to the Rule makes it clear that this is intended to be as guidance only and without prejudice to the responsibilities owed by directors as a matter of law. In other words, the Rule should not supplant established corporate law and precedent in this area.*

Question 3. Do you agree with our proposed addition of the Note to Rule 3.08 referring to the guidance issued by the Companies Registry and HKIOD?

Yes ✓

No

Please give reasons for your views.

***It is, however, probably enough that the Note refers only to the guidance issued by the Companies Registry. In this regard, the Registry's guide would appear to be a sufficient point of reference and to avoid any potential duplication or even inconsistency with the HKIOD's publications. In that regard, one would be aware that the Institute is an organisation which represents directors and, therefore, its guidance will necessarily and understandably reflect that particular perspective.***

Question 4. Do you agree to include a new duty (CP A.5.2(e)) in the nomination committee's written terms of reference that it should regularly review the time required from a director to perform his responsibilities to the issuer, and whether he is meeting that requirement?

Yes

No ✓

Please give reasons for your views.

***It is not for the Nomination Committee to police each director's performance on an on-going basis. It would be sufficient to review his or her performance prior to standing for re-election.***

Question 5. Do you agree to include a new duty (CP A.5.2(f)) in the nomination committee's written terms of reference that it should review NEDs' annual confirmation that they have spent sufficient time on the issuer's business ?

Yes

No ✓

Please give reasons for your views.

***See the response to Q4.***

Question 6. Do you agree to include a disclosure requirement in the Corporate Governance Report (paragraph L(d)(ii) of Appendix 14) that NEDs have made annual confirmation to the nomination committee that they have spent sufficient time on the issuer's business?

Yes ✓

No

Please give reasons for your views.

***This confirmation should be sufficient in itself save when an NED is to be proposed for re-election to the Board.***

Question 7. Do you agree to expanding CP A.5.3(re-numbered CP A.6.3) to state that a director should limit his other professional commitments and acknowledge to the issuer that he will have sufficient time to meet his obligations?

Yes ✓

No

Please give reasons for your views.

***This seems to be a commonsense commitment for a director to make. It should be addressed to the Chairman, on behalf of the board of the issuer as a whole.***

Question 8. Do you agree to expanding CP A.5.3 (re-numbered CP A.6.3) to state that an NED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business?

Yes ✓

No

Please give reasons for your views.

***Save that, as noted under Q6 above, the NEDs' confirmation should be sufficient in itself, unless he is standing for re-election, in which case it can be reviewed by the Nomination Committee.***

Question 9. Do you agree to upgrading RBP D.1.4 to a CP (re-numbered CP D.1.4) and amending it to state that an NED's letter of appointment should set out the expected time commitment?

Yes ✓

No

Please give reasons for your views.

***In itself this seems sensible. However, as a matter of practice, this may require subsequent amendments to that letter in light of appointments to or resignations from board committees which may increase or decrease the expected time commitment beyond that envisaged in the original letter of appointment. To minimise administrative work, it should be sufficient to specify expected time commitment in the original letter of appointment.***

Question 10. Do you agree to upgrading RBP A.5.6 to a CP (re-numbered CP A.6.6) and to amending it to encourage timeliness of disclosure by a director to the issuer on any change to his significant commitments?

Yes ✓

No

Please give reasons for your views.

Question 11. Do you consider that there should be a limit on the number of INED positions an individual may hold?

Yes

No ✓

Please give reasons for your views.

*This purely mechanistic approach to INEDs' time commitments is unhelpful. It focuses only on one narrow aspect of an INED's total outside commitments. For example, an individual may have a single executive role or a number of public commitments which in themselves prevent devoting adequate time to his duties. As regards INED appointments, the position differs largely according to whether an individual does or does not serve on board committees – membership of which, in light of the Code requirements as a whole, may be more time consuming than his duties on the full board.*

*In general, rather than singling out the number of INED positions that an individual may hold, this area is best treated under the more general expectation regarding an individual's ability to meet his commitments as an INED to the issuer.*

Question 12. If your answer to Question 11 is “yes”, what should be the number? Please give reasons for your views.

N/A

Question 13. If your answer to Question 11 is “yes”, do you think that it should be a Rule or a CP?

Rule

CP

Please give reasons for your views.

N/A

## 2. Directors' Training and Independent Non-executive Directors

Question 14. Do you agree that we should upgrade RBP A.5.5 (requirement for continuous professional development) to a CP (re-numbered CP A.6.5)?

Yes

No ✓

Please give reasons for your views.

***We do not believe that this requirement needs to be upgraded. The matter is dealt with adequately at an RBP. However, we recognise the importance which the Exchange attaches to training. We suggest the RBP be strengthened to recommend disclosure of the details of training and professional development made available to directors and the overall level of participation. This would be a first step towards a more stringent regime.***

Question 15. Do you agree that the minimum number of hours of directors training should be eight?

Yes

No ✓

Please give reasons for your views.

***In practice, this requirement is more in the nature of a gesture, than a substantive and significant contribution to the enhancement of directors' skill. A director either is or is not capable of performing his or her duties in an informed manner – a requirement for a minimum (and arbitrary) number of hours' training is unlikely to make any difference – no more than, say, a continuous professional development obligation for a partner in a firm of accountants or lawyers would make that accountant or lawyer more able.***

Question 16. What training methods do you consider to be acceptable for the requirements stated in the proposed CP (re-numbered RBP A.6.5)? Please give reasons for your views.

***Saved as noted in Q15 above, we support the wide range of training methods contemplated in para 66 of the Consultation.***

Question 17. Do you agree that we should upgrade RBP A.3.2 (at least one-third of an issuer's board should be INEDs) to a Rule (re-numbered Rule 3.10A)?

Yes ✓

No

Please give reasons for your views.

***Strong representation from INEDs is increasingly recognised as one of the significant components of a modern corporate governance regime. Elevation of proportionate INED representation is aligned with this.***



Question 18. Do you agree that this Rule (at least one-third of an issuer's board should be INEDs) be effective after a transitional period as described in paragraph 87 of the Consultation Paper?

Yes ✓

No

Please give reasons for your views.

***As the Consultation notes at para 70, a large majority of the issuers already comply with this requirement, so a fairly short transitional period seems adequate.***

Question 19. Do you agree that we should upgrade RBP A.4.3 (shareholder to vote on a separate resolution for the further employment of an INED who has served more than nine years) to a CP (re-numbered CP A.4.3)?

Yes

No ✓

Please give reasons for your views.

***We do not consider service for more or less than 9 years as being any particular indication of the independence of a director, one way or the other. Independence is a state of mind, not a result of length of office. The Consultation itself notes (para 76) the absence of empirical evidence of a direct link between length of service and independence.***

Question 20. Do you agree with our proposal to upgrade RBP A.4.8 (issuer should include explanation of its reasons for election and independence of an INED in a circular) to a CP (re-numbered CP A.5.5)?

Yes ✓

No

Please give reasons for your views.

### 3. Board Committees

#### A. Remuneration Committee

Question 21. Do you agree with our proposal to move the requirement for issuers to establish a remuneration committee with a majority of INED members from the Code (CP B.1.1) to the Rules (Rule 3.25)?

Yes ✓

No

Please give reasons for your views.

***We have no objection to the upgrading of this requirement from the Code to the Rules.***

Question 22. Do you agree with our proposal that the remuneration committee must be chaired by an INED?

Yes

No ✓

Please give reasons for your views.

***We believe that it is sufficient that the Chairman of the Remuneration Committee should be independent of Management – this does not mean that he or she must necessarily be an INED. We consider that with regard to executive remuneration the interest of major shareholders would ordinarily be aligned with those of other shareholders.***

Question 23. Do you agree with our proposal to move the requirement for issuers to have written terms of reference for the remuneration committee from the Code (CP B.1.1) to the Rules (Rule 3.26)?

Yes ✓

No

Please give reasons for your views.

***We have no objection to this, although it may not be a particularly significant change.***

Question 24. Do you agree with our proposal to add a new Rule (Rule 3.27) requiring an issuer to make an announcement if it fails to meet the requirements of proposed Rules 3.25, 3.26 and 3.27?

Yes ✓

No

Please give reasons for your views.

***We agree, subject to the requirement being slightly softened to “as soon as reasonably practicable” as opposed to “immediately”.***

Question 25. Do you agree with our proposal that issuers that fail to meet Rules 3.25, 3.26 and 3.27 should have three months to rectify this?

Yes ✓

No

***We think, however, that the period of 3 months envisaged to cure non-compliance should be increased to 6 months with regard to a breach of rule 3.25. If an INED (particularly when he or she is the Chairman of the Remuneration Committee) dies or suddenly resigns, it may take more than 3 months to find a suitable replacement – especially given the potentially specialist and substantial duties that chairmanship of the Remuneration Committee may involve and the generally increased provisions relating to the appointment and qualification of INEDs, which may well lengthen the time taken to fill the vacancy.***

Question 26. Do you agree that we should add “independent” to the professional advice made available to a remuneration committee (CP B.1.2, re-numbered CP B.1.1)?

Yes

No ✓

Please give reasons for your views.

***We suggest that it is a matter for the Remuneration Committee itself to determine what advice it requires to discharge its duty adequately. Given that the advice is in any event funded by the issuer, it is unclear what benefit the notion of “independence” would add in this regard.***

Question 27. Do you agree that, in order to accommodate Model B, we should revise CP B.1.3 (re-numbered CP B.1.2) as described in paragraph 117 of the Consultation Paper?

Yes ✓

No

Please give reasons for your views.

***This follows from the proposal to accommodate both Model A and Model B. As far as CLP is concerned, we would have been content for the Code simply to contemplate Model B, with Model A being regarded as just one of any other alternatives which an issuer is free to adopt under the comply and explain philosophy of the Code.***

Question 28. (i) Do you agree that where the board resolves to approve any remuneration with which the remuneration committee disagrees, the board should disclose the reasons for its resolution in its corporate governance report)? (ii) If your answer is “yes”, do you agree that RBP B.1.8 should be revised and upgraded to a CP (re-numbered CP B.1.6).

(i)  Yes  No ✓

(ii)  Yes  No

Please give reasons for your views.

***As a matter of principle, we believe that the board functions as a unitary board, bound by collective decision-making and shared responsibility. Within that spirit, dissent and disagreement should be resolved within the board, as opposed to being taken to shareholders. If directors, in this case members of the Remuneration Committee, disagree with the decision of the board, then as with substantial disagreement on any issue, they are entitled to resign and, in their letter of resignation, give reasons.***

Question 29. Do you agree that the term “performance-based” should be deleted from CP B.1.2(c) (re-numbered CP B.1.2(b)) and revised as described in paragraph 118 of the Consultation Paper?

Yes ✓

No

Please give reasons for your views.

B. Nomination Committee

Question 30. Do you agree that RBP A.4.4 (establishment and composition of a nomination committee, re-numbered CP A.5.1) should be upgraded to a CP?

Yes ✓

No

Please give reasons for your views.

Question 31. Do you agree that the proposed CP (currently RBP A.4.4) should state that the nomination committee's chairman should be an INED?

Yes

No ✓

Please give reasons for your views.

***We see no reason that the Nomination Committee's chairman must be an INED. For example, the Committee chairman could also be the chairman of the Board (who may not be an INED himself) and this would be a perfectly reasonable choice – especially given the responsibility of the Chairman of the Board for corporate governance and the general management of the Board. In any case, given that major shareholders will vote on the appointment of new directors, nothing is gained by seeking to exclude non-executive directors associated with major shareholders from the chairmanship of the Nomination Committee.***

Question 32. Do you agree that RBP A.4.5 (nomination committee's terms of reference, re-numbered CP A.5.2) should be upgraded to a CP?

Yes ✓

No

Please give reasons for your views.

Question 33. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should be performed at least once a year?

Yes ✓

No

Please give reasons for your views.

Question 34. Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should implement the issuer's corporate strategy?

Yes

No ✓

Please give reasons for your views.

***This is an example (which has greater impact in the case of a CP than an RBP) where the Code not only requires that a certain task be performed, but goes further and directs the Board or its Committees as to how that task should be performed. Once a Nomination Committee has been established with responsibilities and membership in accordance with the Code, directors should be left to fulfil the responsibilities imposed upon them.***

Question 35. Do you agree that RBP A.4.6 (availability of nomination committee's terms of reference) should be upgraded to a CP?

Yes ✓

No

Please give reasons for your views.

Question 36. Do you agree that the proposed CP (currently RBP A.4.6, re-numbered CP A.5.3) should state that issuers should include their nomination committee's terms of reference on the HKEx website?

Yes

No ✓

Please give reasons for your views.

***It should be sufficient that the Nomination Committee's terms of reference are included on the issuer's website.***

Question 37. Do you agree that RBP A.4.7 (sufficient resources for the nomination committee, re-numbered CP A.5.4) should be upgraded to a CP?

Yes ✓

No

Please give reasons for your views.

***We agree – although this may be a matter of marginal importance.***

Question 38. Do you agree that the proposed CP (currently RBP A.4.7, re-numbered CP A.5.4) should clarify that a nomination committee should be able to seek independent professional advice at the issuer's expense?

Yes ✓

No

Please give reasons for your views.

***Yes – provided that the reference to “independent” can be deleted. It is for the Committee to determine the quality and character of professional advice that it seeks and requires.***



C. Corporate Governance Committee

Question 39. Do you agree with the proposed terms of reference listed in paragraph 141 of the Consultation Paper?

Yes

No ✓

Please give reasons and alternative suggestions.

***We are strongly against this proposal which we think is unsound as a concept.***

***We note that a Corporate Governance Committee is not required in the Corporate Governance Code of the UK, Australia, Singapore and the Mainland – the benchmarking jurisdictions to which reference is most commonly made in the Consultation. On the contrary, the only supporting precedent given in para 1.40 is the NYSE CG Standards. This is in itself revealing, especially since US practice commonly involves the Chairman and CEO being the same person – meaning that a genuine need may arise for a CG Committee in order to introduce some wider Board influences into the issuer’s governance. This is not the case in the Hong Kong model where separation of Chairman and CEO is required.***

***This proposal will confuse, rather than enhance, the responsibility for corporate governance. Para 208 of the Consultation correctly notes that RBP A.2.5 states that the Chairman should take responsibility for ensuring that good corporate governance practices and procedures are established. Para 214 notes that “corporate governance is the responsibility of the entire Board”. And, for that matter, corporate governance is also the responsibility of the Audit Committee, Nomination Committee and Remuneration Committee – if it were not, then they would not be included in the Code.***

***The idea that, somehow, there is a separate Board Committee charged with responsibilities for corporate governance matters is at odds with core concepts, processes and responsibilities as incorporated in the Code as a whole.***

***Nor do we believe that the suggestion that another committee might perform the role of the Corporate Governance Committee is appropriate or properly thought through. Each committee already has its role to play, in accordance with the Code and the Rules.***

***As proposed and drafted, we do not know what the Corporate Governance Committee is doing that other decision-making organs of the issuers should not already be addressing.***

***If the Exchange considers that the extensive array of CG requirements, incorporated in the Rules and the Code as extended by these proposals, it’s insufficient to ensure “the governance of corporate governance” then it would be better to single out these problems and address them specifically.***

Question 40. Do you consider that the committee(s) performing the proposed duties listed in paragraph 141 of the Consultation Paper should submit to the board a written report on its work annually?

Yes

No ✓

Please give reasons for your views.

*See the answer to Q39.*

Question 41. Do you consider that this report (as described in paragraph 140 of the Consultation Paper) should be published as part of the issuer's corporate governance report?

Yes

No ✓

Please give reasons for your views.

*See the answer to Q39.*

Question 42. Do you agree with introducing RBP D.3.3 stating that an issuer should establish a corporate governance committee?

Yes

No ✓

Please give reasons for your views.

*See the answer to Q39.*

Question 43. Do you agree the duties of an existing committee or committees can be expanded to include those of a corporate governance committee?

Yes

No ✓

Please give reasons for your views.

*See the answer to Q39.*

Question 44. Do you agree with the addition of CP D.3.2 stating that the committee performing the proposed duties listed in paragraph 141 of the Consultation Paper should comprise a majority of INEDs?

Yes

No ✓

Please give reasons for your views.

*See the answer to Q39.*

Question 45. Do you agree with the proposal to add a note to CP D.3.2 stating that the committee should include one member who is an executive director or non-executive director with sufficient knowledge of the issuer's day-to-day operations?

Yes

No ✓

Please give reasons for your views.

*See the answer to Q39.*

D. Audit committee

Question 46. Do you agree with our proposal to upgrade RBP C.3.7 (audit committee's terms of reference should include arrangements for employees to raise concerns about improprieties in financial reporting) to a CP?

Yes

No ✓

Please give reasons for your views.

***We disagree that employees' concerns should necessarily be required to be raised with the Audit Committee. It should be quite acceptable (and would not be unusual) for such concerns to be raised with the internal auditor, external auditor, chairman or an INED. There should be no requirement that those concerns need go to the Audit Committee – the "whistleblower" should be left the discretion to raise them with whichever element of the issuer's control regime he felt most at ease.***

Question 47. Do you agree with our proposal to amend CP C.3.3(e)(i) to state that the audit committee should meet the external auditor at least twice a year?

Yes ✓

No

Please give reasons for your views.

***This accords with good practice which would see the external auditor available to meet the Audit Committee on the occasion of its review of the annual and interim financial statements.***

Question 48. Do you agree that a new RBP should be introduced to encourage audit committees to establish a whistleblowing policy?

Yes ✓

No

Please give reasons for your views.

***We agree but subject to comments on Q46.***

#### 4. Remuneration of Directors, CEO and Senior Management

Question 49. Do you agree with our proposal that issuers should disclose senior management remuneration by band (Appendix 16, new paragraph 25A)?

Yes ✓

No

Please give reasons for your views.

Question 50. If your answer to Question 49 is yes, do you agree with our proposal that senior management remuneration disclosure should include sales commission?

Yes ✓

No

Please give reasons for your views.

Question 51. Do you agree with our proposal to amend Appendix 16 to require an issuer to disclose the CEO's remuneration in its annual report and by name?

Yes ✓

No

Please give reasons for your views.

Question 52. Do you agree with our proposal to upgrade RBP B.1.6 to a CP (a significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance, re-numbered CP B.1.5)?

Yes

No ✓

Please give reasons for your views.

*This can be left as an RBP rather than a CP – reflecting the element of discretion that should probably be reserved to the Remuneration Committee and the Board as to the structure of executive directors' remuneration. It is one thing for the Code to express a view on what might be the best practice to adopt. It is a little too much to suggest, as the transition to a CP would apply, that this is in effect the only acceptable way to proceed. And if this is not what is inferred by the upgrade from an RBP to a CP, then it would be difficult to understand why the upgrade would be made.*

## 5. Board Evaluation

Question 53. Do you agree with our proposal to add new RBP B.1.8 that issuers should conduct a regular evaluation of its own and individual directors' performance?

Yes

No ✓

Please give reasons for your views.

*This is likely to be one of the most sensitive and contentious proposals within the consultation. Our suggestion, having regard to existing practice and established and embedded corporate and cultural value is that a move towards the evaluation of the performance of individual directors is a step beyond that which would be practical to implement. In real life, it is doubtful whether it would be respected in spirit, but addressed as mere box ticking and pretended compliance.*

*Our suggestion is that the Exchange's initiative in this area should start with a regular evaluation of the performance of the Board as a whole, thereby avoiding the great sensitivity that would be provoked by the evaluation of the performance of individual directors. We would also suggest that more thought would need to be given to the implications and consequences of the Board concluding that the performance of an individual director was inadequate and the legal ramifications of this –ranging from defamation to enhanced legal liability of the Board as a whole for a director remaining on the Board in circumstances where a documentary record had been created regarding his or her poor standard of performance.*

## 6. Board Meetings

- A. Considering a matter where there is a conflict of interest by a physical board meeting rather than a written board resolution

Question 54. Do you agree that, except for plain language amendments, the wording of CP A.1.8 (re-numbered CP A.1.7) should be retained (issuers to hold a board meeting to discuss resolutions on a material matter where a substantial directors or a director has a conflict of interest)?

Yes ✓

No

Please give reasons for your views.

***We assume that there is an error in Q54 in that the reference to a “substantial directors” should be to a “substantial shareholder”. That apart, it seemed reasonable that a physical meeting be required in such circumstances, with the opportunity to explain any deviation from the CP should that proved necessary.***

Question 55. Do you agree with our proposals to add a note to CP A.1.8 (re-numbered CP A.1.7) stating that attendance at board meetings can be achieved by telephonic or video conferencing?

Yes ✓

No

Please give reasons for your views.

B. Directors' Attendance at Board Meetings

Question 56. Do you agree with our proposal to add the notes to paragraph I(c) of Appendix 14 (on attendance at board meetings) as described in paragraph 195 of the Consultation Paper?

Yes ✓

No

Please give reasons for your views.

***This is a practice we already follow. We do not believe that attendance by an alternate should be considered as attendance by the director himself – it is not the same thing in terms of demonstrating the director's commitment to the issuer and the extent of his personal contribution to the Board's affairs.***

Question 57. Do you agree with our proposal to introduce a new requirement (paragraph I(d) to Appendix 14) that attendance by an alternate should not be counted as attendance by the director himself?

Yes ✓

No

Please give reasons for your views.

***For the same reasons given under Q56 above.***

Question 58. Do you agree with our proposal that an issuer disclose, for each named director, the number of board or committee meetings he attended and separately the number of board or committee meetings attended by his alternate?

Yes ✓

No

Please give reasons for your views.



C. Removing Five Percent Threshold for Voting on a Resolution in which a Director has an Interest

Question 59. Do you agree with our proposal to revise Rule 13.44 to remove the exemption described in paragraph 199 (transactions where a director has an interest)?

Yes ✓

No

Please give reasons for your views.

***We agreed that this exception can be removed.***

7. Chairman and Chief Executive Officer

Question 60. Do you agree with our proposal to remove the words “at the board level” from Code Principle A.2 to clarify the division between management of the board and day-to-day management of an issuer’s business?

Yes ✓

No

Please give reasons for your views.

***These words are neither helpful nor necessary and should be deleted in the interests of clarity.***

Question 61. Do you agree with our proposal to amend CP A.2.3 to add “accurate” and “clear” to describe the information that the chairman should ensure directors receive?

Yes ✓

No

Please give reasons for your views.

***Given UK and Singapore practice and that the Code already refers to adequate, complete and reliable information, the additional adjectives may as well be added.***

Question 62. Do you agree with our proposal to upgrade RBP A.2.4 to a CP to give greater emphasis to the chairman’s duty to provide leadership for the board, to ensure that the board works effectively and discharges its responsibilities, etc.?

Yes ✓

No

Please give reasons for your views.

***There is a clear consensus from widespread corporate experience and informed comments that the role of the chairman is critical in establishing both the right tone and content of issuer’s corporate governance regime.***

Question 63. Do you agree with our proposal to upgrade RBP A.2.5 to a CP and amend it to state: “The chairman should take primary responsibility for ensuring that good corporate governance practices and procedures are established”?

Yes

No ✓

Please give reasons for your views.

***This is a difficult question. Para 214 of the Consultation notes that corporate governance is the responsibility of the entire Board and not the Chairman alone. Yet, as remarked above, the Chairman is an extremely important player in the issuer’s corporate governance. On balance, we would prefer to refer to the Chairman’s “particular responsibility” in order to reflect the individual characteristics and demands of his role, without prejudicing the overall concept that governance is a matter for the entire Board – in accordance with the concept of a unitary board.***

Question 64. Do you agree with our proposal to upgrade RBP A.2.6 to a CP to emphasise the chairman’s responsibility to encourage directors with different views to voice their concerns, allow sufficient time for discussion of issues and build consensus?

Yes ✓

No

Please give reasons for your views.

***We agree with this change, having regard to the importance of the chairman’s responsibility in this respect. However, we would question whether the change will have any substantive benefit given the difficulty of measuring this objectively and the little likelihood of open reporting on any shortcomings in this regard.***

Question 65. Do you agree with our proposal to upgrade RBP A.2.7 to a CP and amend it to state that the chairman should hold separate meetings with only INEDs and only NEDs at least once a year?

Yes ✓

No

Please give reasons for your views.

Question 66. Do you agree with our proposal to upgrade RBP A.2.8 to a CP to highlight the chairman's role to ensure effective communication between the board and shareholders?

Yes ✓

No

Please give reasons for your views.

Question 67. Do you agree with our proposal to upgrade RBP A.2.9 to a CP to emphasise the chairman's role to enable NED contributions and constructive relations between EDs and NEDs?

Yes ✓

No

Please give reasons for your views.

**8. Notifying directorship change and disclosure of directors' information**

Question 68. Do you agree that we should amend Rule 13.51(2) to require issuers to disclose the retirement or removal of a director or supervisor?

Yes ✓

No

Please give reasons for your views.

Question 69. Do you agree that we should amend Rule 13.51(2) to apply to the appointment, resignation, re-designation, retirement or removal of a CEO (and not only to a director or supervisor)?

Yes ✓

No

Please give reasons for your views.

Question 70. Do you agree that we should amend Rule 13.51(2)(o) to cover all civil judgments of fraud, breach of duty or other misconduct involving dishonesty?

Yes ✓

No

Please give reasons for your views.

Question 71. Do you agree that we should amend Rule 13.51B(3)(c) to clarify that the sanctions referred to in that Rule are those made against the issuer (and not those of other issuers)?

Yes✓

No

Please give reasons for your views.

Question 72. Do you agree with our proposal to upgrade RBP A.3.3 to a CP to ensure that directors' information is published on an issuer's website?

Yes ✓

No

Please give reasons for your views.

Question 73. Do you agree with our proposed amendment to the CP (RBP A.3.3 upgraded) that directors' information should also be published on the HKEx website?

Yes

No ✓

Please give reasons for your views.

*We think it should be sufficient that this information is published on the issuer's website.*

## 9. Providing Management Accounts or Management Updates to the Board

Question 74. Do you agree that we should add CP C.1.2 stating issuers should provide board members with monthly updates as described in paragraph 240 of the Consultation Paper?

Yes

No ✓

Please give reasons for your views.

*This is unnecessary and overly prescriptive. Board members should be able to decide for themselves the quality, quantity and frequency of the information with which they are being provided on an issuer's affairs. CP A.2.3 already provides the basic framework for information to be given to directors.*

**10. Next Day Disclosure for a Director Exercising an Option in the Issuer or the Issuer's Subsidiaries**

Question 75. Do you agree with the proposed amendment to Rule 13.25A(2)(a)(viii) and (ix) removing the need for issuers to publish a Next Day Disclosure Return following the exercise of options for shares in the issuer by a director of a subsidiary?

Yes ✓

No

Please give reasons for your views.

Question 76. Do you agree with the proposed amendment to Rule 13.25A(2)(b)(i) and (ii) to require issuers to publish a Next Day Disclosure only if options for shares in the issuer exercised by a director of its subsidiary or subsidiaries results in a change of 5% or more (individually or when aggregated with other events) of the issuer's share capital since its last Monthly Return?

Yes ✓

No

Please give reasons for your views.

**11. Disclosing Long Term Basis on which an Issuer Generates or Preserves Business Value**

Question 77. Do you agree that we should introduce the proposed CP (CP C.1.4) as described in paragraph 250 of the Consultation Paper?

Yes

No ✓

Please give reasons for your views.

***We think this is unnecessary. If shareholders do not know in what the issuer is investing or its corporate objectives, then they either should not have invested or, if they have, do not care about this. Issuers should be left with the freedom and flexibility to decide for themselves how they explain such matters in their Annual Reports. As a result, there will be significant differences between annual reports and shareholders can make their own judgments on those differences. Given that 99% of issuers complied with 41 or more of the 45 CPs in 2009, the intended consequence of such a change (this applies to CP extensions generally) is to eliminate the differences between issuers which would otherwise be evident, and revealing, if these matters were left to individual discretion.***

## 12. Directors' Insurance

Question 78. Do you agree with our proposal to upgrade RBP A.1.9 (issuers should arrange appropriate insurance for directors) to a CP (re-numbered CP A.1.8)?

- Yes ✓
- No

Please give reasons for your views.

Question 79. Do you agree with our proposal to add the words “adequate and general” to RBP A.1.9 (upgraded and re-numbered CP A.1.8)?

- Yes ✓
- No

Please give reasons for your views.

***We agree – although we are unsure whether these words would make any particular difference in practice.***



## PART II: SHAREHOLDERS

### 1. Shareholders' General Meetings

#### A. Notice of Meeting and Bundling of Resolutions

Question 80. Do you agree with our proposal to amend CP E.1.1 to state that issuers should avoid “bundling” of resolutions and where they are “bundled” explain the reasons and material implications in the notice of meeting?

Yes ✓

No

Please give reasons for your views.

*We agree that “bundling” a resolution is not a good practice.*

#### B. Voting by Poll

Question 81. Do you agree with our proposal to amend Rule 13.39(4) to allow a chairman at a general meeting to exempt procedural and administrative matters described in paragraph 274 of the Consultation Paper from voting by poll?

Yes ✓

No

Please give reasons for your views.

*We consider that this is an important practical exemption. In circumstances where there is disruption or other practical impediment to the conduct to a general meeting, it will be impossible to vote on this by way of a poll. The chairman would then be in an impossible position in that he would be unable, because of these preventing factors, to take the meeting forwards but unable, due to the impossibility of polling, to do anything about it.*

Question 82. Do you agree with the examples of procedural and administrative resolutions in paragraph 275 of the Consultation paper? Do you have any other examples to add?

Yes ✓

No

Please give reasons for your views.

***We believe these are sensible and realistic examples of procedural administrative resolution.***

Question 83. Do you agree that our proposed amendments to Rule 13.39(5) clarify disclosure in poll results?

Yes ✓

No

Please give reasons for your views.

Question 84. Do you agree with our proposal to amend CP E.2.1 to remove the words "at the commencement of the meeting" so that an issuer's chairman can explain the procedures for conducting a poll later during a general meeting?

Yes ✓

No

Please give reasons for your views.

***This is a small but sensible amendment. All that is important is that the chairman explains the procedure before the poll is conducted. Whether this is done at the commencement of the meeting or otherwise, is besides the point.***

C. Shareholders' Approval to Appoint and Remove an Auditor

Question 85. Do you agree with our proposal to add new Rule 13.88 to require shareholder approval to appoint the issuer's auditor?

Yes ✓

No

Please give reasons for your views.

Question 86. Do you agree with our proposal to add, in new Rule 13.88, a requirement for shareholder approval to remove the issuer’s auditor before the end of his term of office?

Yes ✓

No

Please give reasons for your views.

Question 87. Do you agree that the new Rule 13.88 should require a circular for the removal of the auditor to shareholders containing any written representation from the auditor and allow the auditor to make written and/or verbal representation at the general meeting to remove him?

Yes ✓

No

Please give reasons for your views.

D. Directors’ Attendance at Meetings

Question 88. Do you agree with our proposal to upgrade RBP A.5.7 (NEDs’ attendance at meetings) to a CP (re-numbered CP A.6.7)?

Yes

No ✓

Please give reasons for your views.

*It would be surprising if any issuer reports non-compliance with this proposition insofar as it relates to “active participation in board meetings” – irrespective of whether it is an RBP or CP. On that basis, it is unlikely that any significant benefit would accrue from this being moved to a CP, save that it may conceivably prevent INEDs from arguing to the contrary in disciplinary or civil proceedings relative to their duties.*

Question 89. Do you agree with our proposal to upgrade RBP A.5.8 (NEDs should make a positive contribution to the development of the issuer’s strategy and policies) to a CP (re-numbered CP A.6.8)?

Yes

No ✓

Please give reasons for your views.

***With the same views as expressed under Q88. i.e. it is doubtful whether an issuer would ever report that its directors were not contributing to an issuer’s “strategy and policies”.***

Question 90. Do you agree with our proposal to introduce a new mandatory disclosure provision in Appendix 23 (re-numbered paragraph I(c) of Appendix 14) stating that issuer must disclose details of attendance at general meetings of each director by name?

Yes ✓

No

Please give reasons for your views.

***It is an appropriate discipline for directors to meet shareholders face to face at AGMs and EGMs.***

Question 91. Do you agree with our proposal that CP E.1.2 state the issuer’s chairman should arrange for the chairman of “any other committees” to attend the annual general meeting?

Yes

No ✓

Please give reasons for your views.

*We understand the rationale behind this proposal. However, on balance, we consider that the duties imposed on the chairmen or board committees are sufficiently extensive (and expanding) not to add the further specific duty of attendance at the AGM – which in any event is something that directors are expected to do pursuant to the Code. Moreover, the effect of the proposal is not entirely clear with regard to what is meant by arranging for the issuer’s chairman to arrange for the chairman of other committees to attend. Is the issuer’s chairman expected, for example, to schedule the AGM for a date which is convenient to all committee chairman (and if he fails to do so, would he or she be in breach of the CP)? If the chairman asked the committee chairmen to turn up and they were unable to do so, would that require disclosure as a deviation from the Code? Moreover, in practice, the number of occasions when shareholders actually pose questions directly to the committee chairmen (or the issuer’s chairman or other directors would be unable to answer those questions unsatisfactorily themselves) is so rare that no CP to this effect is really required.*

E. Auditor’s Attendance at Annual General Meetings

Question 92. Do you agree with our proposal that CP E.1.2 state that the chairman should arrange for the auditor to attend the issuer’s annual general meeting to answer questions about the conduct of the audit, the preparation and content of the auditors’ report, the accounting policies and auditor independence?

Yes ✓

No

Please give reasons for your views.

*This has been our practice for a number of years.*

## 2. Shareholders' Rights

Question 93. Do you agree with our proposal to upgrade the recommended disclosure of "shareholders' rights" under paragraph 3 (b) of Appendix 23 to mandatory disclosure (re-numbered paragraph O of Appendix 14)?

Yes ✓

No

Please give reasons for your views.

## 3. Communication with Shareholders

### A. Establishing a Communication Policy

Question 94. Do you agree with our proposed new CP E.1.4 stating that issuers should establish a shareholder communication policy?

Yes

No ✓

Please give reasons for your views.

***We can understand the reasons for this proposal. However, we consider that this falls into that category of practices which should be left to the Board's discretion and judgment as already contemplated by CP E.1. We suggested it is for the Board and shareholders to determine how they should communicate with each other, rather than the Exchange through the Code.***

### B. Publishing Constitutional Documents on Website

Question 95. Do you agree with our proposal to add a new Rule 13.90 requiring issuers to publish an updated and consolidated version of their M & A or constitutional documents on their own website and the HKEx website?

Yes ✓

No

Please give reasons for your views.

***It should be sufficient for this to be on the issuer's own website.***

C. Publishing Procedures for Election of Directors

Question 96. Do you agree with our proposal to add a new Rule 13.51D requiring an issuer to publish the procedures for shareholders to propose a person for election as a director on its website?

Yes ✓

No

Please give reasons for your views.

***With reference to our answer to Q95, we are not entirely clear as to the reason why matters are required to be published on the HKEx website, and others which are not. Furthermore based on our experience, there are a major constraints in the HKEx website including the size of files that HKEx website can accommodate.***

D. Disclosing Significant Changes to Constitutional Documents

Question 97. Do you agree with our proposal to upgrade the recommended disclosure of any significant change in the issuer's articles of association under paragraph 3(c)(i) of Appendix 23 to mandatory disclosure (re-numbered paragraph P(a) of Appendix 14) ?

Yes ✓

No

Please give reasons for your views.

### PART III: COMPANY SECRETARY

#### 1. Company Secretary's Qualifications, Experience and Training

Question 98. Do you agree with our proposal to introduce a new Rule 3.28 on requirements for company secretaries' qualifications and experience?

Yes ✓

No

Please give reasons for your views.

*We believe that this is an appropriate change, given the increasing complexity of the Rule and the Code and the importance of the role of the company secretary in ensuring compliance and provoking good corporate governance.*

Question 99. Do you agree that the Exchange should consider as acceptable the list of qualifications for company secretaries set out in paragraph 345 of the Consultation Paper?

Yes ✓

No

Please give reasons for your views.

Question 100. Do you agree that the Exchange should consider the list of items set out in paragraph 346 of the Consultation Paper when deciding whether a person has the relevant experience to perform company secretary functions?

Yes ✓

No

Please give reasons for your views.



Question 101. Do you agree with our proposal to remove the requirement for company secretaries to be ordinarily resident in Hong Kong?

Yes

No ✓

Please give reasons for your views.

***Whilst we appreciate the increasing number of listed issuers operating outside Hong Kong, it is helpful to have the company secretary to be ordinarily resident in Hong Kong as the key communication channel with the regulators. Furthermore, removing this requirement will be inconsistent with the Hong Kong company law regime under which the Companies Bill provides that a company secretary of a company must***

***(a) if a natural person, ordinarily reside in Hong Kong; and***

***(b) if a body corporate, have its registered office or a place of business in Hong Kong.***

Question 102. Do you agree with our proposal to repeal Rule 19A.16 so that Mainland issuers' company secretaries would need to meet the same requirements as for other countries?

Yes ✓

No

Please give reasons for your views.

Question 103. Do you agree with our proposal to add a Rule 3.29 requiring company secretaries to attend 15 hours of professional training per financial year?

Yes ✓

No

Please give reasons for your views.

***Notwithstanding reservations about the genuine merits of such training, we believe that this is in line with the continuous professional development regimes commonly applied to other professions and in other jurisdictions.***

Question 104. Do you agree with the proposed transitional arrangement on compliance with Rule 3.29 in paragraph 350 of the Consultation Paper?

Yes ✓

No

Please give reasons for your views.

***We agree with the proposed transitional arrangement, save that we see no reason why the transitional period should not be shortened. Whilst one of the authors of these comments would be grateful to avoid the proposed 15-hours training requirement until 1 August 2015, this is probably not justifiable.***

## 2. New Section in Code on Company Secretary

Question 105. Do you agree with our proposal to include a new section of the Code on company secretary?

Yes ✓

No

Please give reasons for your views.

***Recognition in the Code of the importance of the company secretary's responsibility in a corporate governance framework is overdue and most welcome.***

Question 106. Do you agree with the proposed principle as described in paragraph 362 of the Consultation Paper and set out in full in page 27 of Appendix II?

Yes ✓

No

Please give reasons for your views.

Question 107. Do you agree with our proposed CP F.1.1 stating the company secretary should be an employee of the issuer and have knowledge of the issuer's day-to-day affairs?

Yes ✓

No

Please give reasons for your views.

***We appreciate that this provision may cause difficulties to corporate secretarial service providers and, therefore, a transitional period may be required. Nonetheless, we believe that the ongoing widening and deepening of corporate governance requirements placed on issuers and the role of the company secretary in securing compliance is such that this CP merits introduction. It may be that some transitional provision would be required to allow for qualified company secretaries to be sourced and appointed.***

Question 108. Do you agree with our proposal described in paragraph 364 of the Consultation Paper, that if an issuer employs an external service provider, it should disclose the identity of its issuer contact person?

Yes ✓

No

Please give reasons for your views.

Question 109. Do you agree with our proposed CP F.1.2 stating that the selection, appointment or dismissal of the company secretary should be the subject of a board decision?

Yes ✓

No

Please give reasons for your views.

Question 110. Do you agree with our proposed note to CP F.1.2 stating that the board decision to select, appoint or dismiss the company secretary should be made at a physical board meeting and not dealt with by written board resolution?

Yes ✓

No

Please give reasons for your views.

Question 111. Do you agree with our proposal to add CP F.1.3 stating that the company secretary should report to the Chairman or CEO?

Yes ✓

No

Please give reasons for your views.

Question 112. Do you agree with our proposal to add CP F.1.5 stating that the company secretary should maintain a record of directors training?

Yes ✓

No

Please give reasons for your views.

## CHAPTER 3: PROPOSED NON-SUBSTANTIVE AMENDMENTS

### 1. Definition of “Announcement” and “Announce”

Question 113. Do you agree with our proposal to include a definition in the Rules for the terms “announcement” and “announce” as described in paragraph 371 of the Consultation Paper?

Yes ✓

No

Please give reasons for your views.

### 2. Authorised Representatives’ Contact Details

Question 114. Do you agree with our proposal to amend Rule 3.06(1) to add a reference to authorised representatives “mobile and other telephone numbers, email and correspondence addresses” and “any other contract details prescribed by the Exchange may prescribe from time to time”?

Yes ✓

No

Please give reasons for your views.

### 3. Merging Corporate Governance Report Requirements into Appendix 14

Question 115. Do you agree with our proposal to merge Appendix 23 into Appendix 14 for ease of reference?

Yes ✓

No

Please give reasons for your views.

Question 116. Do you agree with our proposal to streamline Appendix 23 and to make plain language amendments to it?

Yes ✓

No

Please give reasons for your views.

- End -