

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.

We strongly oppose this proposal as we are of the view that the required levels of skills, care and diligence expected of directors have been and will be further laid down in the company law legislation as well as common law. The Listing Rules should not set out directors' duties requirements which may overlap or contradict the legal rules.

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.

Two drafting comments – (1) the Companies Registry’s Guide may be revised from time to time, suggest not to refer to the issue time of “July 2009”; (2) the reference to the “courts” in the proposed Note to Rule 3.08 shall be replaced by the “Exchange”, as the directors need to know the standard expected of them from the Exchange’s point of view, not that of the courts in the context of the Listing Rules.

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.

We object to the proposed requirements that all issuers should establish a nomination committee with the chairman and majority members to be INEDs. It is a matter for the concerted wisdom of all directors. The executive directors are affluent with the management of the issuer and provide day-to-day leadership whereas non-executive directors (including INEDs) are expected to provide a different and balancing perspective in deciding the composition of the board. We question the assumption that INEDs solely make better decisions in director nominations.

Based on the above, we object to the proposal of a new duty for the nomination committee as a Code Provision. It should at most be a RBP.

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.

Please refer to our response to Question 4 above. Based on the same reasonings, we object to this proposed new duty of the nomination committee as a Code Provision.

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.

Given that we object to the requirement to establish a nomination committee, such annual confirmation should be made to the board of directors.

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.

We support requiring a director to acknowledge his time commitment to the issuer, but we do not agree that it is necessary for the director to 'limit his other professional commitments' so as to properly perform his duties towards the issuer.

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.

Same as our response to Question 6 above – we suggest that the annual confirmation should be made to the board of directors.

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.

We object to the proposal of upgrading RBP D.1.4 to a CP since it is not the Company's practice to have formal letters of appointment for all directors, including the NEDs. Our NEDs are expected to clearly understand their duties to the Company, to which they are collectively and individually responsible for. In addition, part of these duties are established under the common law, the legal position of which may adjust from time to time, and it is not desirable to attempt to formulate these comprehensively in writing. To have a formal letter of appointment may also lead to inflexibility.

We further object to set out the expected time commitment in NED's letter of appointment as it will be difficult to predict the time required for each director on the Company's matters. Further, this proposed requirement is unnecessary in view of the other proposal which requires NEDs to confirm their time commitments annually.

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.

The Exchange should not assume that an individual who takes on more INED positions cannot devote sufficient time on those positions. There is a differentiation between a person with a full-time job and one who does not have one. Besides, the time commitment required of an INED depends on, amongst other things, the nature and complexity of the business transactions conducted by the issuer which require board approval. Nevertheless, this issue should be best left to the individual and the issuer to decide.

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.

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.

We support the proposed requirement for continuous professional development in that directors can keep abreast of the regulatory and legal development in areas of relevance, but such requirement should not be measured by the number of hours spent. The appropriate amount of training required of the directors per financial year should be best to be decided by the directors themselves and the proposed minimum of 8 hours should (at most) be a RBP.

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.

We agree that all the training methods set out in paragraph 66 of the Consultation Paper should be acceptable and the scope should be left flexible, for the reasons set out in the same paragraph which are applicable to our directors.

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.

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.

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 agree to the arguments set out in paragraph 76 of the Consultation Paper.

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.

The explanation is unlikely going to be useful for shareholders. It will likely be superficial and formalistic, inserted for the purpose of complying with the requirement.

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.

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.

There is an advantage for an Executive Director to be the Chairman of the remuneration committee as he/she possesses the knowledge and understanding of the skills and contribution of each member of the Board so as to give a meaningful remuneration recommendation. So long as the remuneration committee comprises a majority of INEDs members, having an Executive Director to be the Chairman should not compromise the checks and balances to be provided by the INEDs.

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.

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.

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

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.

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.

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.

Disclosure of the reasons will lead to personnel and privacy issues.

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.

Please see our response to Question 4 above. Further, the board of directors as a whole should be responsible for the appointment of new directors and reviewing the structure, size and composition of the board from time to time.

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.

Please see our response to Question 30 above. We do not support the proposal to mandatorily require issuers to establish a 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.

Please see our response to Question 30 above. We do not support the proposal to mandatorily require issuers to establish a nomination committee.

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.

Please see our response to Question 30 above. We do not support the proposal to mandatorily require issuers to establish a nomination committee.

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.

Please see our response to Question 30 above. We do not support the proposal to mandatorily require issuers to establish a nomination committee.

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.

Please see our response to Question 30 above. We do not support the proposal to mandatorily require issuers to establish a nomination committee.

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.

Please see our response to Question 30 above. We do not support the proposal to mandatorily require issuers to establish a nomination committee.

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.

Please see our response to Question 30 above. We do not support the proposal to mandatorily require issuers to establish a nomination committee.

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.

Please see our response to Question 30 above. We do not support the proposal to mandatorily require issuers to establish a nomination committee.

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.

Corporate governance is the responsibility of the full board of directors and should not be delegated to a board committee. The proposed duties listed in paragraph 141 of the Consultation Paper can be undertaken by the existing committees or the board of directors of the Company.

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.

The Consultation Paper has not set out the rationale behind this proposal and the content requirement of the written report. The proposal will lead to a duplication of work with the corporate governance report included in the annual report, which has to be reviewed and confirmed by the board of directors as well as members of the Audit Committee.

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.

Please refer to our response to Question 40 above. We object to the proposed requirement for submitting a work report on corporate governance to the board on an annual basis.

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.

Corporate governance is the responsibility of the full board of directors, and not of a selected few.

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.

For issuers with a small board and small number of INEDs, the composition of a corporate governance committee is likely to be the same as that of the audit committee anyway.

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.

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.

This is not necessary as the Company Secretary will have the requisite knowledge and information to assist the INEDs to discharge their proposed duties in respect of corporate governance. The Consultation Paper has failed to justify the rationale behind this proposal and in any event, the executive directors can be invited to attend the meeting on request by any member. Besides, if the proposed duties are to be performed by an existing committee, this would mean that an executive director has to be appointed to such committee which may not be inconsistent with the present composition of such existing committee.

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.

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 proposed requirement should be introduced as a RBP only since presently there is no requirement for issuer to engage external auditor to perform review of its interim results, and as such, the attendance of external auditor at the meeting of the Company's audit committee is only required once a year for the purpose of approving the annual results. This proposal will have the effect of requiring the Company to instruct the external auditor to perform a review of the interim results as the auditors would decline to attend any meeting convened for the purpose of reviewing results for which they have not undertaken any review/audit work on (as they do not wish to be assumed to take responsibility of the information presented at the meeting). This would have additional cost implications for the Company.

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.

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.

We do not think this proposal can bring additional benefit to the shareholders since at present, the remuneration of the five highest paid individuals is required to be disclosed. We are of the view that sufficient transparency has been provided to the shareholders. Such disclosure is only justifiable if the aggregated remuneration to senior management exceeds a significant percentage of the issuer's turnover or profit.

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.

Not applicable.

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.

Issuers should be given the flexibility of designing the remuneration packages of their executive directors. The requirement to have a “significant proportion” of executive directors’ remuneration linked with performance will prove to be impractical and unrealistic.

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.

The performances of the board or individual directors are best reflected by the Company’s results and stock price performance, as well as the Company’s decisions to retain the individuals as its directors. The role of confidence is casted by investors by holding the stocks for long-term basis.

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.

A company has been given the option to approve a matter involving conflict of interests by way of written resolution under the laws and its articles and this right should not be taken away without proper legislative process. Further, directors are expected to fully consider the matter before approving a matter whether by way of written resolutions or at a physical meeting.

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.

We only agree to the proposed addition of note 2. Please also see our response to Question 57 below.

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.

The proposal conflicts with company laws in that attendance by alternate is counted as attendance by the director himself. However, we appreciate the rationale behind this proposed requirement in that an alternate may sometime not able to fully reflect the views of his appointor. In view of this, we support the proposal that an issuer needs to disclose separately attendance in person (either physically or via other means, e.g. telephone) and by his alternate for board and committee meetings – please see our response to Question 58 below.

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.

The proposal to remove the exemption under Paragraph (3) of Note 1 in Appendix 3 to the Listing Rules seems to be overly restrictive and may be inconsistent with the issuer's constitution and applicable company laws.

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.

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.

From a practical angle, it is difficult for the chairman to ensure that directors will receive accurate and clear information.

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.

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.

However, the entire board should be responsible for corporate governance of the issuer.

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.

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.

We question the need for holding separate meetings with ONLY INEDs and ONLY NEDs. The spirit of the requirement is to encourage the chairman to discuss e.g. management issues with directors without the presence of the executive directors. The interests and responsibilities of NEDs and INEDs should align. We therefore suggest that the CP should only require the chairman to meet with INEDs and NEDs together (without the presence of executive directors) once a year.

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.

It should be appreciated that whether the communication is effective is a judgement call in most situations.

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.

We think that it is neither appropriate nor meaningful to try to identify the role and function of its individual directors as the executive directors are collectively in charge of the overall management of the issuer as a team while the full board is jointly and severally responsible for all matters of the issuer.

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.

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.

We do not think that this is necessary since the Company's board of directors will meet at least four times a year. Any matter arising in the interim which is worth the immediate attention of the board will be brought to its attention.

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 agree to the proposed requirement to include an explanation of an issuer's business model and corporate strategy in the annual report, but suggest that this can be included in the "MD&A" section of the annual report and that a separate statement is not necessary.

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.

It is arbitrary to measure what is “adequate” coverage.

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.

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.

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.

This is a good starting point. However, we look forward to receive further guidance from the Exchange on this issue (perhaps in the form of FAQs).

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.

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.

This proposal should be consistent with the company laws of the issuer's country of incorporation for all issuers. The power of directors to fill casual vacancy of the auditor authorised under the laws should not be disregarded.

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.

This proposal should be consistent with the company laws of the issuer's country of incorporation for all issuers.

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.

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.

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.

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.

However, we have two comments – (1) the word “arrange” has a connotation that the chairmen of any other committees are at the disposal of the issuer’s chairman, and we suggest an alternative wording of “invite”; (2) a flexibility should be provided for attendance in that the invitation can be extended to members of the committees.

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.

We support the idea but the issuer’s management cannot “ensure” that the external auditor would attend the AGM on the day but can “invite” for his/her presence.

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.

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.

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.

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.

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.

This proposal seems to conflict with the legal requirement for Hong Kong companies.

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.

The Exchange should clarify whether, if for any unforeseen reason the company secretary is unable to complete the requisite hours of training and thereby breaching this proposed listing rule requirement, will constitute a breach by the issuer. If this is not the intention of the Exchange, we suggest to have this requirement set out in the CG Code as a code provision instead.

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.

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.

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 do not agree that the company secretary can have knowledge of the issuer's "day-to-day" affairs. It will be more reasonable and realistic to expect him/her to have sufficient knowledge of the issuer's business and affairs.

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.

Directors are expected to fully consider any matter put before them for approval no matter whether it is by way of written resolutions or a physical board meeting.

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.

The company secretary should report to the full board of directors. The design of the reporting line is a matter which is best to be determined by the issuer itself.

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.

Provided that there is no material change from the current provisions which had not been clearly set out in the Consultation Paper.

- End -