

10 March 2011

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central Hong Kong

Submit via e-mail to response@hkex.com.hk

Re: Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules

Dear Madam/Sir,

CFA Institute¹ and The Hong Kong Society of Financial Analysts (“HK SFA”)² welcome the opportunity to participate in the Hong Kong Exchange and Clearing Limited’s (“HKEx”) consultation paper regarding changes to the Corporate Governance Code and the associated listing rules in Hong Kong. We commend HKEx for such a comprehensive review in response to changes in market conditions and expectations.

We are pleased to forward you our joint comments which are primarily from the perspective of representing investors’ interests and promoting financial market integrity.

Good corporate governance practices are necessary for several reasons. It not only promotes a market with higher ethical standards and integrity, but it also strengthens investor protection and increases investor confidence and their willingness to invest in the market. It also encourages foreign investment.

CFA Institute and HK SFA are supportive of HKEx’s revisions and believe they are an improvement on the current rules, especially in the areas of director training, board committees and shareholder

¹ With headquarters in Charlottesville, VA and regional offices in New York, Hong Kong, and London, CFA Institute, formerly the Association for Investment Management and Research®, is a global, non-profit professional association of more than 100,000 financial analysts, portfolio managers, and other investment professionals in 136 countries of which more than 90,000 are holders of the Chartered Financial Analyst® (CFA®) designation. CFA Institute membership also includes 135 Member Societies and Chapters in 58 countries and territories.

² The Hong Kong Society of Financial Analysts Ltd. (HK SFA) is a non-profit organization founded in 1992 to promote the professional and ethical standards of financial analysts and investment practitioners in Hong Kong. As a member society of CFA Institute, the Hong Kong Society assists in the mission of CFA Institute to help investment professionals around the world meet the challenges of global investing.

communication. However, we believe HKEx still needs to focus on the area of board independence. Even after the proposed revisions are implemented, Hong Kong's corporate governance practices in regards to board independence are still far from international best practice. For example, international best practice calls for a majority independent board and an independent chairman.

Given the high number of family run companies in Hong Kong, if these two practices were in place it would help to ensure that the board maintains its objectivity and independence even in the presence of controlling shareholders.

CFA Institute has written a report which we believe is relevant to the HKEx's work and this current consultation paper. "Independent Non-Executive Directors – A Search for True Independence in Asia," focuses on board composition and the independence of directors in Asia. We will forward a hard copy of this report to the HKEx by mail or it can be accessed online at <http://www.cfapubs.org/toc/ccb/2010/2010/1>.

CFA Institute and HKSFSA appreciate the opportunity to comment on HKEx's consultation paper on corporate governance practices and the associated listing rules. We trust you find our comments useful. If you have questions in regards to this letter or the enclosed reports, please feel free to contact Lee Kha Loon at khaloon.lee@cfainstitute.org, or Cheri Wong at cheri.wong@hksfa.org.

Sincerely,

Kha Loon Lee, CFA
Head, Standards and Financial Market Integrity
Asia Pacific
CFA Institute

Cheri Wong, CFA
Chief Executive Officer
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Angela Pica, CFA
Policy Analyst, Standards and Financial Market
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Richard Mak, CFA
Member of the Board of Directors
The Hong Kong Society of Financial Analysts

Enc: *Independent Non-Executive Directors – A Search for True Independence in Asia*, CFA
Institute Centre, 2010 (by mail)

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By mail to: Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

**Re: Consultation Paper on Review of the Code on Corporate
Governance Practices and Associated Listing Rules**

By email to: pdpo@hkex.com.hk

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Part A General Information of the Respondent

All fields are mandatory, except the fields with an asterisk (*) if you are an individual respondent.

Name/ Company Name*	:	CFA Institute & Hong Kong Society of Financial Analysts
Contact Person*	:	Kha Loon Lee & Cheri Wong
Title*	:	Mr Lee - Head, Standards and Financial Market Integrity, Asia Pacific Ms Wong - CEO
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If you **do not wish** to disclose the above information to the public, please check the box here:

I do not wish to disclose the information above.

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.

Yes, it is important to clarify the responsibilities the exchange expects of directors instead of directors trying to read between the lines and making assumptions. Even though one would expect directors should already be taking an active interest, obtaining a general understanding and following up anything untoward, it is good to make these essential duties more explicit.

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 good to have a reference for directors to help explain the duties in practice because this level of detail cannot be included in the rule.

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 important for the nomination committee (NC) to monitor whether directors are spending enough time in their role. This can be gauged by monitoring attendance and active participation by directors. The NC is the right group to be involved because they are entrusted with reviewing the composition of the board and nominating new members.

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.

If CP A.5.2(e) is introduced it is only fair that the NC should review NEDs annual confirmation as well. If there are discrepancies then it is up to the NC to decide which is correct. It should be treated similar to the annual confirmation of independence by INEDs.

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.

Yes, this is consistent with the annual disclosure requirement for INEDs confirming their independence.

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.

Yes, this would provide further clarification to the existing CPA.5.3 and it is consistent with the practices used by the European Commission. However, we also believe the CP should be expanded. An acknowledgment from the director to the issuer that he will have sufficient time to meet his obligations is completely subjective. We recommend that directors disclose what the other commitments are and if they are other board appointments the director should disclose the additional information including the company size, the board size and number of INED positions and the number of board meetings a year. This will provide the issuer with a better understanding as to whether the director will be able to fulfil his/her duties on the board.

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.

Please refer to our answer for Question 7. Yes we agree with expanding CP A.5.3. However, we believe that a statement alone is not sufficient. Additional disclosures (see our answer to Question 7) should be made in order for the annual confirmation to be most meaningful for the issuer and shareholders.

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.

Including expected time commitment in the letter of appointment gives new directors a better understanding as to what is expected and given any other commitments they might have they would be better able to judge if they can actually carry out the role at the appropriate level.

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.

Disclosing any significant changes is important for the issuer therefore we agree with upgrading this from a RBP to a CP. Also stating that changes should be made in a 'timely manner' assumes changes should be disclosed as soon as possible, rather than using the term 'periodic' which does not create a sense of urgency.

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.

We believe directors should disclose all their other directorships, as well as other relevant information (such as number of board meetings, company size and the number of INEDs present), at the time of nomination so that shareholders can make their own judgement on whether the director would be "too busy" to carry out his/her duties.

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

It is very hard to give an absolute number because each directorship could have different time requirements. Some may sit on few boards and the time commitment may be very large, but another director may sit on many boards but because they are smaller companies, have large boards etc his/her time commitment is less. Therefore we believe that a range, subject to increased director disclosure (see answers to Question 7 and 11) would be more appropriate.

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.

In this case we believe a rule would be too restrictive.

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.

Continuous professional development (CPD) should be something that is required not just recommended. It is important for directors to be updated on changes to the legal and regulatory environment as well as on the issuers’ corporate strategy and performance. If this is left as a ‘recommendation’ given the busy schedules of directors they may opt not to do it even though it is greatly beneficial to their roles as directors.

We believe there should some clarification in this CP as to the requirements of the CPD. There should be some mention of what types of CPD is necessary. Obviously this will be industry/company specific however there are some basic areas that we believe the CP should cover, for example it should state that the CPD should cover such things as the regulatory environment, financial management, director’s duties and corporate governance.

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 believe there should be compulsory training however we do not advocate that there should be a specific number of training hours. We believe this should be contingent on the type of training that is required. Some companies may require more training than others, therefore directors may need to do more than 8 hours, whereas some may require less. It is difficult to justify a specific number of hours for all directors.

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.

Training methods can be anything that increases the directors' knowledge of a subject. For example attendance at conferences, seminars etc and in house briefings/training sessions from internal and external consultants are likely to be the most effective.

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.

Yes upgrading this RBP to a Rule is a step in the right direction. CFA Institute believes that the board should be majority independent because this is consistent with recommendations in the UK, the USA and Australia. It is even more important in Asia because of the high concentration of ownership in Asian companies. Majority-independent boards will ensure that there are enough INEDs to exercise collective independence and to share the committee workload. At least one-third is the absolute minimum number of INEDs that should be required on the board.

It is important to recognise that just increasing the number/ratio of INEDs on the board will not necessarily increase the true “independence” of the board. A person can be labelled independent by the nomination committee or the board but could still not be “independent” in the true sense of the word. Often nomination committees (if in place) or the board hire INEDs who are somehow related to the controlling shareholder and/or management or are part of an ‘old boys club’ so the INEDs are just figureheads but do not actually provide independent and objective judgement. Therefore, in order to increase the ‘independence’ of the board the Quality of INEDs hired needs to be addressed as well.

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.

Companies that do not already comply should be given enough time to find appropriate INEDs. A transitional period should be in place to encourage issuers to find ‘truly’ independent directors. Without such a transitional period issuers may resort to finding directors who do not really meet the independence guidelines because they are rushed to meet the deadline.

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.

Nine years is a long time to be in a role, especially as an INED. It is likely that after 9 years INED is no longer independent or as independent. However, if the director is still carrying out his/her duties at a high level it is best to let shareholders decide whether the INED should be kept. It is important that all the relevant information be disclosed to shareholders before the vote so they are fully informed.

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.

We strongly agree with this proposal. It is very important for shareholders to have access to all the relevant information (including the nature of any relationships of the person that could affect his or her ability to act independently) about the INED before the meeting to allow them to make an informed decision. Increasing transparency and the quality of information disclosed to shareholders sufficiently in advance of the meeting improves the chances that truly independent directors will be appointed.

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.

Yes it should be mandatory for the remuneration committee (RC) to have majority of INED. The RC needs to display independent judgement and provide independent advice to the board as to what are fair salary packages for executives. There should not be executive directors present on the RC who could potentially influence their own pay.

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.

Yes, the Chair has the responsibility to make decisions and direct conversation of the committee therefore it is important for the Chair to be an INED. It not only maintains the independence of the committee but it will ensure the committee is not influenced by an insider's views.

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.

Given the establishment of Rule 3.25, it makes sense for written terms of reference for the RC to be also made into a Rule.

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.

Yes, external professional advice for the RC should always be from an independent party. If it were not independent then this would compromise the objective and duties of the RC and it would negate the need for seeking advice in the first place.

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.

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.

Yes, given board evaluation is not a requirement conducting 'performance-based' remuneration for the NEDs may be difficult to implement in practice. However the remuneration of executive management (ie CEO, executive directors regardless of if they are on the board) should always be based on performance. A large component of an executive's salary should be performance-based so that the interests of management are best aligned with the interests of shareholders.

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.

Yes, it should be upgrade to at least a CP if not a Rule. The NC has an important role in reviewing the size and composition of the board as well as identifying and recommending new candidates for the board. It should be an essential part of all boards. The NC is also responsible for assessing the independence of directors, therefore issuers should place more importance on this committee because truly independent directors are vital for an effective board.

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.

Yes, a non-INED chair would compromise the independence and quality of the NC and potentially influence the decisions of the NC to favour certain parties. A non-INED chair could potentially be related to management or a controlling shareholder and as such nominate candidates for the board who are not truly independent. Given that many companies in Hong Kong are controlled by founding families, it is important for the chair to be an INED so that conflicts of interests can be minimised.

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.

Yes this would be consistent with the upgrade of RBP A.4.4 to a CP.

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.

Yes, the NC should review the structure, size and composition of the board at least once a year or when there is a change. This will keep the board from being stagnant and will ensure the right people are in the right roles and the composition of the board is still aligned with the issuers overall goals and strategy.

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.

Yes, the candidates recommended by the NC should have characteristics both personal and professional that complements the issuer's corporate strategy. They should come from a range of relevant backgrounds so that board discussion is on topic and members have the opportunity to provide valuable and relevant input.

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.

Making the terms of reference available on an issuer's website is a good way of increasing transparency to shareholders so that they can get a better understanding of the processes the NC is responsible for.

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 is good to have a central repository of the information to help investors to efficiently find the information. It is the responsibility of the issuer to ensure that the information posted on the company and HKEx websites is up to date and accurate.

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 that RBP A.4.7 should be upgraded to a CP to ensure that sufficient resources are available to the nomination committee if independent professional advice is required.

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.

The NC should be able to solicit independent advice especially when trying to find nominees for INEDs. They should be able to use Executive Recruitment agencies that are completely independent from the issuer so that there are no potential conflicts of interest.

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 agree with the proposed terms of reference for the board but we believe that corporate governance is the responsibility and function of the entire board and the establishment of a separate committee is not needed. The establishment of a separate committee by an issuer should be completely voluntary and should not fall under any requirement or recommendation in the Corporate Governance Code.

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 board is responsible for corporate governance issues and already needs to publish a corporate governance report which is included in the issuer's Annual Report. Therefore there is no need for an additional report.

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 answer to Question 40.

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 answer to Question 39.

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.

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.

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.

Yes, the AC should have the ability to facilitate arrangements for employees to raise concerns about improprieties in financial reporting. Employees at levels below executive management may be aware of improprieties that have been covered up by more senior staff.

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.

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 believe that this should be a CP and not a RBP, keeping it in line with the proposal to upgrade RBP C.3.7 to a CP. It would be helpful to have protection in place for employees or external parties to voice concern without consequences. This could potentially prevent large blown out scandals and help the board discover improprieties sooner.

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.

Senior management remuneration should be disclosed by name and NOT by band. Disclosure by band does not give shareholders any valuable information because they do not have any detail. Senior management get paid a significant amount of money and given this money are shareholders' funds they have the right to see exactly how much management is getting paid.

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.

Transparency on CEO remuneration in the annual report by name is very important for shareholders. Shareholders have the right to know how much the CEO is getting paid and the breakdown of cash, performance bonus and share options.

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.

It is very important for executive directors' remuneration to be aligned to performance based measures. This should provide better incentives for executives to work hard and pursue the corporate goals and initiatives, which will not only increase their total remuneration but it will also increase shareholder value.

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.

We agree with the importance of the issuer conducting regular evaluation of its own, and individual director's performance. However, we believe this should be a CP and not a RBP. If it is introduced as a RBP there should be a time frame for when it will be upgraded to a CP. Understanding the performance of the firm and the board is crucial for maintaining and increasing shareholder value.

Within the new RBP/CP there needs to be greater clarity as to how the regular board evaluation should be conducted in practice.

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.

To promote fruitful discussion board meetings should be held on material matters where a substantial director/s has a conflict of interest. Whenever there is a conflict of interest the board needs to be able to discuss the issue and it is hard to promote open discussion over email.

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.

This becomes more important as boards introduce members in a range of geographic locations. Even though it is essential to have a certain number of face-to-face meetings a year, some meetings can be conducted via tele- or videoconference. Given that many of the directors may be INEDs increasing the method of attendance at meetings would hopefully encourage these directors to participate directly rather than sending an alternate director or declining the role to be a director.

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.

Yes we think that it is fair to only count a person's attendance in person or via tele-videoconference and if they are appointed part way during the year, only attendance from his/her start date should be counted and recorded.

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.

If a director could not physically attend all meetings (either in person or tele-videoconference) or a majority of meetings and instead sent an alternate then the board must question the director's commitment to the board and his/her duties as a director. It is an indication that the director may be 'too busy'. Therefore in order to discover this information, only attendance by the director and NOT the alternate should be counted.

We do not think that alternate directors should be permitted. They are not elected by shareholders therefore they have no right to sit in on board meetings.

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.

By splitting out the attendance by director and alternate it should be clear to the NC and shareholders the time the director is actually committing to the board. The NC and shareholders can then make decisions accordingly.

However, as mentioned in the answer to Question 57, we do not believe alternate directors should be permitted.

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.

Yes we agree with this proposal. A director can still have significant interest and control in a company even though he/she owns no more than 5%. The Satyam scandal in 2008/9 is a good example. The Raju brothers only had a deemed interest of 8.31% in Satyam through a private company however they were able to push an abusive related party transaction through the board, and it was later discovered that they also 'cooked the books' at Satyam. This subsequently brought down not only the reputation of the company but their own lives as well.

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.

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.

Yes, all the detail in RBP A.2.4 should be a required by the chairman not just recommended. Chairmen should understand that their role is extremely important for an effective and well run board.

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.

Yes, all board members should be responsible for good corporate governance but the chairman takes on primary responsibility as part of his/her leadership role.

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.

Yes, the chairman needs to act like a facilitator and encourage board discussion and help board members feel comfortable offering their views. If board members are intimidated, board discussion will be limited.

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.

It is important for there to be a forum where INEDs can voice their opinion and share their views without the presence of executive management (EDs). There is no point including NEDs in this discussion because although they are not part of the executive management team, they can still be a controlling shareholder or have a relationship with a controlling shareholder, thus compromising the independence and objective of holding the separate meeting.

Often INEDs, who are originally place on the board to provide an objective and independent view, do not get the chance to really voice their true opinion. They can be appointed either directly or indirectly by a controlling shareholder who either chairs or controls the board. INEDs can remain loyal to the person who appointed them and therefore it can often be hard for INEDs to voice an opinion that differs from the majority. If there is a controlling shareholder on the board, they still have the power to dismiss the INED at will, therefore it perpetuates a tendency not to 'rock the boat'.

IF the chairman is 'truly' independent, a forum where INEDs could be honest and open with their views, without threat of dismissal, would be very beneficial for the overall effectiveness of the board.

This consultation does not address a current weakness in the code around the role of the chairman. The Code still does not require or recommend the chairman be independent. This is an important requirement because if the chairman is not independent it is hard for the board to maintain its objectivity, especially in the presence of controlling shareholders.

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.

Yes, the chairman should remind board members that shareholders have the right know about any material changes or events that occur within the company. This includes results, changes to the board, significant changes to forecasts, M&A etc. If this role is delegated the chair must always ensure that the communication has been executed. Also if shareholders have raised concerns during the AGM or during the year or they have nominated directors, the chairman must ensure it is put on the agenda for board information or discussion.

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.

It is important for the chairman to create and encourage a culture of openness and debate among board members. EDs will inevitably have a greater knowledge of the business, therefore NEDs may find it difficult to challenge their views. The chairman is responsible for ensuring that internal conflict is constructive and conducive to productive discussion rather than obstructive. As mentioned in Question 65, often there is little conflict on boards where there is a controlling shareholder or representative. Rather there should be healthy debate among board members during meetings. In these circumstances, again we emphasise the chairman must be 'truly' independent, the chairman should try and arouse debate.

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.

Yes, shareholders have the right to know of any changes to the board, especially a change such as 'removal' or 'retirement' of a director. They must also be made aware of the reason behind the change such as a conflict with a board member(s) on significant matters or any matters that should be brought to the attention of shareholders.

Ideally the director who has been removed or retired, etc should make an announcement directly to the exchange because this would eliminate any potential miscommunication between the issuer and exchange in regard to their reason for departure.

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.

Yes the CEO has an essential role in the organisation and any change (and reason for the change) should be disclosed to shareholders immediately.

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.

The issuer's website should be important source of information for shareholders. Often shareholders will go to the issuer's website first followed by the exchange. All necessary information including board members, policies, annual results etc should be posted on the website so shareholders have a central source for the company information.

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.

If the exchange discloses company information on companies listed on its exchange then board information should also be included in this disclosure.

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.

More disclosure is desirable given that monthly summary updates on the issuer's financial performance rather than detailed accounts will be presented so it will not be information overload for the 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.

It is important to have more disclosure and improved transparency to shareholders so as to let investors make informed investment decisions.

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.

We agree with the upgrade from a RBP to a CP with the aim of protecting the interest of the issuer and its shareholders against potential legal actions against directors.

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.

To emphasize directors to make appropriate and adequate insurance cover is suitable.

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.

Yes, it should be made clear to issuers that bundling resolutions should be avoided because it is a way to potentially hide material resolutions so that they are passed, even though they may not have been passed if they were listed separately.

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.

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.

We agree with the proposed amendment to clarify poll results. The current requirements to disclose votes for and against would not provide investors with the full results of the resolution if the votes abstained have not been counted and disclosed. This is of particular importance in connected party transactions whereby interested shareholders who attend the meeting are required to abstain from voting.

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.

Given that the majority of issuers are not incorporated in Hong Kong and therefore are not subject to Hong Kong law it is important that Rule 13.88 be included in the Listing Rules. Shareholders should be aware of any changes to the auditors and they should be aware of the reasons why such an auditor was chosen before they are required to approve the appointment.

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.

As above. Shareholders should understand why an auditor has been removed before the end of his term because this could potentially mean that there was a difference of opinion between internal and external auditors as well as the audit committee. This can have a huge impact on shareholders and the value of the company if the differing opinions were related to material discrepancies in the company's financials.

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.

Yes this will increase the transparency to shareholders and increase their understanding of why the auditor was removed/retired. Please see answer to Question 86.

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.

NEDs should be required to attend board and committee meetings because it is part of their role as board members. They should also attend general meetings as required by the chairman so shareholders have an opportunity to ask them questions which may be different to questions to EDs.

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.

We agree with the upgrade since making positive contribution to the development of the issuer's strategy and policies is part of a director's role and duty.

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.

Yes, details of directors' attendance at general meetings can be included in the annual report. This way shareholders can use the information to understand how engaged directors are with the company and shareholders.

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.

The chairman of "any other committees" other than just the audit, remuneration and nomination committee should be available to answer questions from shareholders in general meetings.

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.

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.

The disclosures under Paragraph 3(b) should be made available to shareholders because they are some of their core shareholder rights. Shareholders must be aware of policies and procedures so that they can actually exercise their rights when appropriate.

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.

These documents should be published on the issuer's website together with other important documents and policies. If a shareholder wants to access these documents, the first and most logical place to search is the issuer's website. These documents should be made available so shareholders can better understand the company's strategy, policies and their rights.

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.

Yes this would certainly increase transparency and encourage or at least facilitate greater shareholder activism. The ability to nominate a director is an important right for shareholders, and in order to exercise this right they need to be aware and understand the procedures.

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.

Yes, shareholders should be made aware of any changes in the issuer's articles because they may impact on their rights.

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 support clear rules and accountability on governing the requirements for company secretaries' qualifications and experience.

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.

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.

In general, we support the idea of continuing training for company secretary as the corporate governance standards are complex and change over time. However, it is hard to give an absolute number because it depends on the content of the training, the experience of the company secretary and other company factors.

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.

We agree that company secretary can play a more important role in board communication and enhance corporate governance within the company. By introducing a new section, this will send a clear message to the market.

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.

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.

We agree with the proposal as the decision of selecting, appointing or dismissing the company secretary should be made by the board at a physical board meeting given the importance of his/her role.

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.

See answer to Question 109.

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.

We support to use plain language to simplify the wordings so that layman can understand the spirit behind the code.

- End -