

CB(1)1805/10-11(11)



**CHARTERED  
SECRETARIES**  
特許秘書

More than meets the eye.  
潛能, 超越所見.

*April W. Y. Chan*  
President

Clerk to Bills Committee on Companies Bill  
Legislative Council Secretariat  
Room 815, 8<sup>th</sup> Floor  
Murray Road Multi-storey Car Park Building  
2 Murray Road, Central  
Hong Kong

30 March 2011

Dear Sir

Re: Companies Bill

Thank you for your faxed letter of 8 March 2011 inviting the Institute to give views on the above Bill. Our comments are set out in the enclose table.

We take this opportunity to send you as well our submission to Hong Kong Exchanges and Clearing Limited on its Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules.

With best regards

Yours faithfully

April W. Y. Chan FCIS FCS(PE)  
President

Enclosure

The Hong Kong Institute of Chartered Secretaries  
Submission to Bills Committee on Companies Bill

Companies Bill	Comments
Part 10 Directors and Company Secretaries Division 2 Directors' Duty of Care, Skill and Diligence Section 456 Duty to exercise reasonable care, skill and diligence	<ul style="list-style-type: none"> <li>• Whilst we appreciate the rationale behind Section 456 of raising the standard of directors, we are still concerned with the prospect of two directors, one with an accounting background and the other without, sitting at the audit committee being held to different standards of skills. This may potentially deter well-qualified individuals from taking up directorship in Hong Kong companies.</li> <li>• We stand by our earlier submission that issuing non-statutory guidelines (by the Companies Registry) to clarify and give guidance on this complex subject remains our preference.</li> </ul> <hr/> <ul style="list-style-type: none"> <li>• In the event that the Bills Committee is persuaded to implement the Government's proposals, the section, as drafted, does not seem to reflect the intention of paragraph 17 of the Consultation Paper which provides that the objective test is the minimum standard and can be adjusted upwards to reflect any special skill, knowledge and experience possessed by a particular director but cannot be adjusted downwards.<sup>1</sup></li> <li>• The problem perhaps is with the word 'and' after Section 456 (2)(a) which provides for the objective test.</li> <li>• It should make it clear that the objective standard is the minimum and shall not be lower than the subjective one.</li> </ul>
Part 13 Arrangements, Amalgamation, and Compulsory Share Acquisition in Takeover and Share Buy-Back Division 2 Arrangements and Compromises Section 664 Court may sanction arrangement or compromise	<ul style="list-style-type: none"> <li>• Consistent with the 'one share on vote' principle, we continue to support the abolition of the headcount test.</li> <li>• We would urge the Bills Committee to consider the views of the majority of the respondents to the consultation who were in favour of abolishing the headcount test. See paragraphs 7, 8 and 12 of Consultation Conclusions released by Financial Services and the Treasury Bureau dated 30 August 2010.<sup>2</sup></li> </ul>

<sup>1</sup> Paragraph (a) provides an objective test whereas paragraph (b) a subjective test. The objective test is the minimum standard. It can be adjusted upwards to reflect any special skill, knowledge and experience possessed by a particular director but cannot be adjusted downwards to accommodate someone who is incapable of attaining the basic standard of what can reasonably be expected of the reasonably diligent person carrying out the same function.

<sup>2</sup> Paragraph 7: A total of 144 submissions commented on the subject focusing primarily on members' schemes of listed companies. Paragraph 8: A total of 24 submission opted for abolishing the test for members' schemes of listed companies. Paragraph 12: Some 48 respondents commented on the headcount test for creditors' schemes. The majority (33 submissions) preferred abolishing the test.

Companies Bill	Comments
Part 18 Communications to and by Companies Division 1 Preliminary Section 811 Period specified for purposes of sections 816(a), 819(7)(a) and 821(11)(b)	<ul style="list-style-type: none"> <li>• Section 811(2) and Section 821(11)(b) seem to suggest that a document posted on the website is to be regarded as being received by that other person the longer of 48 hours or the period set out in the company's articles.</li> <li>• Section 811(5) further states that in calculating a period of hours, any part of a day that is not a business day is to be disregarded.</li> <li>• The section seems to have added an extra 48 business-day hours to what is set out in Listing Rule 2.07A (2A)(e).<sup>3</sup></li> <li>• If the intention of the section is to align with the requirements of the Listing Rules, consideration should be given to delete the 48 business-day hours (for communication by making it available on a website).</li> </ul>

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<sup>3</sup> Rule 2.07A (2A)(e) The corporate communication is taken to be sent:  
 (i) on the date on which the notification required under rule 2.07A(2A)(d) is sent; or  
 (ii) if later, the date on which the corporate communication first appears on the website after that notification is sent.

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			General Comments
			<ul style="list-style-type: none"> <li>• We always maintain that corporate governance should be a boon and not a burden to business.</li> <li>• The Code on Corporate Governance should set out broad principles and avoid being overly prescriptive. Indeed, the following from the Foreword to the UK report 'Women on boards' seems particularly instructive:        "During the course of this review some people told us that the only way we could make real change in increasing the number of women on boards was by introducing quotas. They said that other routes have already been tried, but women still remain a small minority on UK boards. Many other people told us that quotas would not be their preferred option as they did not want to see tokenism prevail. On balance the decision has been made not to recommend quotas. Government must reserve the right to introduce more prescriptive alternatives if the recommended business-led approach does not achieve significant change."<sup>1</sup></li> <li>• New proposed changes should preferably be first introduced as an RBP.</li> </ul>

<sup>1</sup> Lord Davies report, *Women on Boards*, February 2011, <http://www.bis.gov.uk/news/topstories/2011/Feb/women-on-boards>.

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				General Comments
				<ul style="list-style-type: none"> <li>• Corporate governance is something for the entire board.</li> <li>• The proposals should, as far as possible, align with Hong Kong's company law regime. The proposal to remove the requirement for company secretaries to be ordinarily resident in Hong Kong is at variance with what is set out in the Companies Bill.</li> <li>• The proposals, if implemented, should allow issuers some time to prepare for the new regime – the new Code on Corporate Governance Practices should preferably be effective 1 January 2012.</li> </ul>

	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
CHAPTER 1	INTRODUCTION			
	Plain Writing Amendments			
Question 1.	<p>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?</p> <p>Please give reasons for your views.</p>		✓	We support the use of plain language, which benefits readers and writers.

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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?  Please give reasons for your views.	✓		The proposed wording clarifies the responsibilities expected of directors.
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?  Please give reasons for your views.	✓		The proposed guidance issued by the Companies Registry and HKIOD, updated as appropriate, will address the fact that directors' duties are not static but evolve over time to take into account developments in statutory and case law. "That the directors' duties are best illustrated and clarified by non-statutory guidelines, interpretation notes and practice notes" is something we support all along - see our submission to the Consultation Paper on Company Names, Directors' Duties, Corporate Directorship & Registration of Charges to the Companies Bill Team, Financial Services and the Treasury Bureau dated 7 July 2008.
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?  Please give reasons for your views.		✓	We support the requirement to establish a nomination committee with written terms of reference. However, the present proposal, when read together with the others (raised in this section), could fall into the trap of being overly prescriptive.

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				<p>In general, our members have the following concerns:</p> <ul style="list-style-type: none"> <li>• It is the quality and relevance of time spent by the director that count;</li> <li>• It is difficult to measure or verify hourly record;</li> <li>• There is the need to respect differences due to service on committees;</li> <li>• Experienced INEDs are the most sought after and therefore the busiest;</li> <li>• It will be unduly burdensome (and not practical) to require directors to docket their time spent on the issuer.</li> </ul>
Question 5.	<p>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?</p> <p>Please give reasons for your views.</p>		✓	<p>Nomination committee should not be overburdened with the work to undertake ongoing monitoring of NEDs' commitment. It would be sufficient for nomination committee to review NEDs' performance prior to their standing for re-election.</p>
Question 6.	<p>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?</p> <p>Please give reasons for your views.</p>	✓		
Question 7.	<p>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</p>	✓		<p>Consideration could be given to reword the confirmation to state that a director should acknowledge to the issuer that</p>

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	acknowledge to the issuer that he will have sufficient time to meet his obligations?  Please give reasons for your views.			he will "discharge his duties as director properly".
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?  Please give reasons for your views.	✓		See suggestion to Question 7.
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?  Please give reasons for your views.		✓	As different director brings different skill sets to the board, this might fall into the trap of being overly prescriptive.
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?  Please give reasons for your views.	✓		Consideration should be given to encourage timeliness of disclosure of a director to the issuer when the director expects that he could no longer discharge his duties.
Question 11.	Do you consider that there should be a limit on the number of INED positions an individual may hold?  Please give reasons for your views.		✓	Seems like we are moving towards the rule-based approach. Also, it may be difficult to agree on the number of INED positions an individual may hold.
Question 12.	If your answer to Question 11 is "yes", what should be the number?			Not applicable



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	Please give reasons for your views.			
Question 13.	If your answer to Question 11 is "yes", do you think that it should be a Rule or a CP?  Please give reasons for your views.			Not applicable
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)?  Please give reasons for your views.		✓	No one could dispute the value of continuous professional development. How we should achieve that should perhaps be best left to individual professional organisations.
Question 15.	Do you agree that the minimum number of hours of directors training should be eight?  Please give reasons for your views.			Eight hours seems an arbitrary number.
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.			Continuing professional development is the maintenance and enhancement of an individual's professional knowledge, skills, attitudes and ethics throughout the individual's career. Again, we prefer to leave the means for achieving it to individual professional organisations.
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	✓		The proposal will align Hong Kong with the requirements in the jurisdictions as set out in paragraph 79.

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	3.10A)?  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?  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)?  Please give reasons for your views.		✓	Independence is a state of mind, not a result of the length of office.
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)?  Please give reasons for your views.	✓		This should allow shareholders to make informed decisions.
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)?	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	Please give reasons for your views.			
Question 22.	Do you agree with our proposal that the remuneration committee must be chaired by an INED?  Please give reasons for your views.	✓		We support the proposal and agree with the analysis in paragraph 97.
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)?  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?  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?	✓		
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)?  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			Our members have diverse views. We should perhaps revise the provision when the possible flaws of Model B, referred to

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	of the Consultation Paper?  Please give reasons for your views.			in Para. 102 of the consultation paper, are addressed.
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)?		✓	We are still concerned that disclosing the reasons does not necessarily solve the problem that no director should be involved in deciding his own remuneration.
Question 28. (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)?			Not applicable
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?	✓		We agree that management's remuneration proposals should be reviewed by the remuneration committee "with reference to the board's corporate goals and objectives".
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?  Please give reasons for your views.	✓		
Question 31.	Do you agree that the proposed CP (currently RBP A.4.4) should state that the nomination committee's chairman should be an INED?  Please give reasons for your views.	✓		
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?	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	Please give reasons for your views.			
Question 33.	Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should be performed at least once a year?  Please give reasons for your views.	✓		
Question 34.	Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should implement the issuer's corporate strategy?  Please give reasons for your views.		✓	Corporate strategy is a matter for the board to decide.
Question 35.	Do you agree that RBP A.4.6 (availability of nomination committee's terms of reference) should be upgraded to a CP?  Please give reasons for your views.	✓		
Question 36.	Do you agree that the proposed CP (currently RBP A.4.6, re-numbered CP A.5.3) should state that issuers should include their nomination committee's terms of reference on the HKEx website?  Please give reasons for your views.	✓		
Question 37.	Do you agree that RBP A.4.7 (sufficient resources for the nomination	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	committee, re-numbered CP A.5.4) should be upgraded to a CP?  Please give reasons for your views.			
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?  Please give reasons for your views.	✓		
C.	Corporate Governance Committee			
Question 39.	Do you agree with the proposed terms of reference listed in paragraph 141 of the Consultation Paper?  Please give reasons and alternative suggestions.		✓	We believe good corporate governance is a matter for the entire board. Indeed, Para. 214 of the consultation paper seems to echo that sentiment. <sup>2</sup> Creating a separate corporate governance committee may give the erroneous impression that corporate governance is now a matter reserved for a selected few. As noted in Para. 140 of the consultation paper, having a corporate governance committee does not appear popular in other jurisdictions.
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?  Please give reasons for your views.		✓	See our response to Question 39.

<sup>2</sup> The wording is: "Corporate governance is the responsibility of the entire board and not the chairman alone."

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
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?  Please give reasons for your views.		✓	See our response to Question 39.
Question 42.	Do you agree with introducing RBP D.3.3 stating that an issuer should establish a corporate governance committee?  Please give reasons for your views.		✓	See our response 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?  Please give reasons for your views.		✓	See our response to Question 39.
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?  Please give reasons for your views.		✓	See our response to Question 39.
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?  Please give reasons for your views.		✓	See our response to Question 39.

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
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?  Please give reasons for your views.			Members have diverse views. Employees should feel free to raise their concerns with the internal auditor, external auditor or an INED and not necessarily confined to the audit committee.
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?  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?  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)?  Please give reasons for your views.	✓		We support the move towards greater transparency in executive remuneration.
Question 50.	If your answer to Question 49 is yes, do you agree with our proposal that senior management remuneration disclosure should include sales	✓		



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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	commission?  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?  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)?  Please give reasons for your views.	✓		
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?  Please give reasons for your views.			Members have diverse views. Perhaps as a starting point, consideration could be given to introduce a new RBP recommending issuers to conduct a regular evaluation of the board's performance as whole (instead of individual directors).
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		✓	It would seem that whether a particular matter should be

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	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)?  Please give reasons for your views.			discussed at a physical board meeting should be something for the Chairman to decide, having regard to all relevant circumstances.  The issuer should hold a board meeting to discuss resolutions as and requested by a director.
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?  Please give reasons for your views.	✓		This makes sense in light of the advance in technology and the increased consciousness to protect our environment by cutting down travel.
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?  Please give reasons for your views.	✓		
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?  Please give reasons for your views.	✓		
Question 58.	Do you agree with our proposal that an issuer disclose, for each named director, the number of board or committee meetings he	✓		While we support this proposal, it could send the wrong signal that attendance is the most important criterion to

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	attended and separately the number of board or committee meetings attended by his alternate?  Please give reasons for your views.			evaluate a director's contribution.
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)?  Please give reasons for your views.	✓		
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?  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?  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	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	<p>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.?</p> <p>Please give reasons for your views.</p>			
Question 63.	<p>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"?</p> <p>Please give reasons for your views.</p>	✓		However, we should be mindful that corporate governance is a matter for the entire board.
Question 64.	<p>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?</p> <p>Please give reasons for your views.</p>	✓		
Question 65.	<p>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?</p> <p>Please give reasons for your views.</p>	✓		
Question 66.	<p>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</p>	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	between the board and shareholders?  Please give reasons for your views.			
Question 67.	Do you agree with our proposal to upgrade RBP A.2.9 to a CP to emphasise the chairman's role to enable NED contributions and constructive relations between EDs and NEDs?  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?  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)?  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?  Please give reasons for your views.	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
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)?  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?  Please give reasons for your views.	✓		
Question 73.	Do you agree with our proposed amendment to the CP (RBP A.3.3 upgraded) that directors' information should also be published on the HKEx website?  Please give reasons for your views.	✓		Provided that there is no constraint in respect of the timing for publication (i.e., publication could be made during trading hours).
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?  Please give reasons for your views.	✓		
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)	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	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?  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?  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?  Please give reasons for your views.			Members have diverse views.
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)?	✓		Professionals get liability insurance to protect potential claimants. The issuer and the shareholders are potential claimants against directors. Why should the issuer (instead of the directors) arrange and pay the premium for the

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	Please give reasons for your views.			director's insurance?  While there may be merits in this argument, especially in North America, until we come up with an alternative, the present proposal seems reasonable.
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)?  Please give reasons for your views.	✓		
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?  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?	✓		



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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	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?  Please give reasons for your views.	✓		The examples set out in paragraph 275 of the Consultation Paper seem a good start and we look forward to seeing HKEx's guidance (in the form of an FAQ) on this subject.
Question 83.	Do you agree that our proposed amendments to Rule 13.39(5) clarify disclosure in poll results?  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?  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?  Please give reasons for your views.	✓		
Question 86.	Do you agree with our proposal to add, in new Rule 13.88, a requirement for shareholder approval to remove the issuer's auditor before the end of his term of office?	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	Please give reasons for your views.			
Question 87.	Do you agree that the new Rule 13.88 should require a circular for the removal of the auditor to shareholders containing any written representation from the auditor and allow the auditor to make written and/or verbal representation at the general meeting to remove him?  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)?  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)?  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?	✓		See also our response to Question 58.

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	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?  Please give reasons for your views.		✓	The phrase "any other committees" is too broad. It is never easy (and may be impossible) to schedule the annual general meeting to suit the availability of all committee chairmen. The arrangement to ensure the chairman of the nomination, audit and remuneration committees to attend should be sufficient in terms of addressing shareholders' questions at annual 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?  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 0 of Appendix 14)?  Please give reasons for your views.	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
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?  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?  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?  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)?	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	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?  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?  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?  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?  Please give reasons for your views.		✓	While we appreciate the fact that HKEx lists an increasing number of issuers that operate outside Hong Kong, removing the requirement for company secretaries to be ordinarily resident in Hong Kong does not sit well with the government and politicians' recurrent theme of providing more

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
				<p>opportunities for local professionals.</p> <p>Indeed, Clause 465 of the Companies Bill (currently before Legislative Council) provides that a company secretary of a company must</p> <ul style="list-style-type: none"> <li>(a) if a natural person, ordinarily reside in Hong Kong; and</li> <li>(b) if a body corporate, have its registered office or a place of business in Hong Kong.</li> </ul> <p>The present proposal does not sit well with Hong Kong's company law regime.</p>
Question 102.	<p>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?</p> <p>Please give reasons for your views</p>		✓	We believe Mainland issuers' company secretaries should be a professional ordinarily resident in Hong Kong.
Question 103.	<p>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?</p> <p>Please give reasons for your views.</p>	✓		
Question 104.	Do you agree with the proposed transitional arrangement on compliance with Rule 3.29 in paragraph 350 of the Consultation	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	Paper?  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?  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?  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?  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?  Please give reasons for your views.	✓		
Question 109.	Do you agree with our proposed CP F.1.2 stating that the selection,	✓		

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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	<p>appointment or dismissal of the company secretary should be the subject of a board decision?</p> <p>Please give reasons for your views.</p>			
Question 110.	<p>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?</p> <p>Please give reasons for your views.</p>	✓		
Question 111.	<p>Do you agree with our proposal to add CP F.1.3 stating that the company secretary should report to the Chairman or CEO?</p> <p>Please give reasons for your views.</p>	✓		
Question 112.	<p>Do you agree with our proposal to add CP F.1.5 stating that the company secretary should maintain a record of directors training?</p> <p>Please give reasons for your views.</p>	✓		
CHAPTER 3	PROPOSED NON-SUBSTANTIVE AMENDMENTS			
1.	Definition of "Announcement" and "Announce"			
Question 113.	<p>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?</p>	✓		



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	Consultation Questions	Yes	No	Reasons for our views/alternative suggestions
	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 contact details prescribed by the Exchange may prescribe from time to time"?  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?  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?  Please give reasons for your views.	✓		