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特許秘書

# The Hong Kong Institute of Chartered Secretaries

Submission:

Consultation Paper on proposed amendments to the Codes  
on Takeovers and Mergers and Share Buy-backs

4 April 2018

By Email Only: [takeoverscode\\_review@sfc.hk](mailto:takeoverscode_review@sfc.hk)

**Corporate Finance Division**

The Securities and Futures Commission  
35th Floor, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Dear Sirs

**Re: Consultation Paper on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs**

**About HKICS**

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional institute representing Chartered Secretaries as governance professionals in Hong Kong and Mainland China with over 5,800 members and 3,200 students. HKICS originates from The Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom (UK) with 9 divisions and over 30,000 members and 10,000 students internationally. HKICS is also a Founder Member of Corporate Secretaries International Association Limited (CSIA), an international organisation comprising 15 national member organisations to promote good governance globally.

**Consultation Paper**

Reference is made to the Consultation Paper (CP) on the proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs (Codes). Words and expressions used herein have the meaning set out under the CP unless the context requires otherwise. HKICS as a governance institute recognises the importance of the non-statutory Codes for an orderly market. The views being offered are collated from Member views and from a governance perspective.

## HKICS CP Responses

In relation to the questions raised under the CP, HKICS's submission based on Member views is as follows:

- **Part 1: Dealings with and powers of the Executive, Panel and Takeovers Appeal Committee**

### *Dealings with the Executive, Panel and Takeovers Appeal Committee*

**Question 1: Do you agree with the proposals regarding parties' dealings with the Executive, Panel and Takeovers Appeal Committee? If not, please give reasons.**

We submit that the new section 5.2 is consistent with fair treatment to shareholders who are affected by takeovers, mergers and share buy-backs. A minor comment on the new section is whether the word 'and' is needed in '...known to him and relevant to the matter being considered...'. The sentence would be clearer if the word 'and' is deleted.

### *Compliance rulings*

**Question 2: Do you agree with the proposal to add new sections 7.2 and 13.12 to the Introduction to the Codes and to amend section 13.10 to the Introduction to the Codes? If not, please give reasons.**

We submit that it will be useful to have notes as to the restraints contemplated for information.

### *Compensation rulings*

**Question 3: Do you agree with the new proposal regarding compensation rulings? If not, please give reasons.**

We have Member views that support the proposal to align the position with London and Singapore codes. Yet there are Member views that financial compensation should only be imposed by the court or tribunal with judicial officer(s) in their composition. From a governance perspective, we would need to understand the processes adopted to determine whether or not to make any compensation rulings and amount thereunder prior to determining whether or not to support compensation rulings.

*Disciplinary proceedings and remedial/compliance rulings*

**Question 4: Do you agree with the proposed amendments to section 12.2 to the Introduction to the Codes? If not, please give reasons.**

We have no issue with the original drafting nor the revised drafting for clarification.

- **Part 2: Definition and use of the term "associate"**

**Question 5: Do you agree with the proposal to amend the definition of associate and the consequential amendments? If not, please give reasons.**

We have no issue with the amendment to eliminate overlap and potential inconsistencies which is in good governance.

**Question 6: In respect of the proposed amendments to class (3) of associate, do you agree with Option 1 or Option 2? Please give reasons.**

We are in favour of Option 1. There is a difficulty relating to regulating the nexus between parents and a person who is over 18 years old. In any event, if there are any concert implications, their dealings would be disclosable.

- **Part 3: Voting Threshold For Whitewash Waivers**

**Question 7: Do you agree that the voting threshold for whitewash waivers should be increased from 50% to 75%? If not, please give reasons.**

The context is the vote amongst independent shareholders. As such, the majority rule applies and there is no need from a governance perspective to deviate from the position. We would be interested in the empirical evidences of warehousing of shares by friendly parties to support the moving from a majority to a super-majority (75%) position which we did not find in the CP.

**Question 8: Do you agree that separate resolutions should be required for each of the underlying whitewash transaction(s) and the whitewash waiver? If not, please give reasons.**

We agree as these important resolutions should be voted on separately from a governance point of view.

**Question 9: Do you agree that the 75% voting threshold should apply to each resolution for the underlying whitewash transaction(s) and the whitewash waiver? If not, please give reasons.**

Please see out comment to Question 7.

**Question 10: Do you agree with the proposed amendment to Note 1 on dispensations from Rule 26 to include the word "normally"? If not, please give reasons.**

We have no issue with the amendment to clarify the position.

- **Part 4: Approval of delistings by Independent Shareholders**

**Question 11: Do you agree with the proposal to add a Note to Rule 2.2 to clarify the matters above? If not, please give reasons.**

We agree as the amendment is necessary to cove the gap, for example with the PRC jurisdiction.

- **Part 5: Disclosure of Number of, Holdings of and dealings in, relevant securities**

**Question 12: Do you agree with the proposed amendments to Rules 3.8 and 22 and the consequential changes to Note 1 to paragraph 4 of Schedule I and paragraph 12 of Schedule I? If not, please give reasons.**

We have no issue with the amendment for consistency of practice.

**Question 13: Do you agree with the proposed new paragraph 3(p) in Schedule IX? If not, please give reasons.**

We have no issue with the extension to cover the issue.

**Question 14: Do you agree with the proposal to amend Note 5 to Rule 22? If not, please give reasons.**

We have no issue with the working related amendments.

**Question 15: Do you agree with the proposal to amend Note 6 to Rule 22? If not, please give reasons.**

We have no issue with the simplification of the drafting.

- **Part 6: Miscellaneous amendments**

**Question 16: Do you agree with the amendment to class (5) of the presumption of acting in concert? If not, please give reasons.**

We have no issue with adding EFMs to the exemption.

**Question 17: Do you agree with the proposal to amend section 8.3 of the Introduction to the Codes? If not, please give reasons.**

We have no issue with highlighting the matters under the amendments.

**Question 18: Do you agree with the proposed amendments to Notes 2 and 3 to Rule 8.1? If not, please give reasons.**

We have no issue to the amendments to cover the means and other forms of communications and related issues.

**Question 19: Do you agree with the proposed new Notes 4 and 5 to Rule 12 and the consequential changes relating to the new Note to Rule 8.6 and the new Note 6 to Rules 9.3 and 9.4? If not, please give reasons.**

We have no issue with the codification of the existing practice under the amendments.

**Question 20: Do you agree with the proposed deletion of the definition of "CA" and the proposed amendments to Note 3 to Rule 15.5 and Note 4 to Rule 26.2? If not, please give reasons.**

We have no issue with the use of more generalised reference to regulatory approvals.

**Question 21: Do you agree with the proposed clarification to Note 2 to Rule 18? If not, please give reasons.**

We agree with the additional words being proposed.

**Question 22: Do you agree with the proposal to amend Note 4 to Rule 18? If not, please give reasons.**

We have no issue with the amendments which are consistent with the London Code.

**Question 23: Do you agree with the proposed amendments to Rule 2.9 and the proposed new Note to Rule 19.1? If not, please give reasons.**

We have no issue with the additional disclosures which are in good governance.

**Question 24: Do you agree with the proposed amendments to Rule 30.1? If not, please give reasons.**

We have no issue with the minor amendments.

**Question 25: Do you agree with the proposed amendments to Rule 31.3? If not, please give reasons.**

We have no issue with the amendments for clarification purpose.

**Question 26: Do you agree with the proposal to amend paragraph 1 of Schedule II and the related Note 4? If not, please give reasons.**

We have no issue with the amendments to conform to practice.

**Question 27: Do you agree with the proposal to add a new Note 5 to paragraph 12 of Schedule I and a new note to paragraph 16 of Schedule III? If not, please give reasons.**

We have no issue to reduce the administrative burden consistent with the London Code.

**Question 28: Do you agree with the proposal amendments as set out in Appendix 3? If not, please give reasons.**

We have no issue with alignment with financial accounting terminology.

Should you have any questions, please feel free to contact Samantha Suen FCIS FCS(PE), Chief Executive, HKICS or Mohan Datwani FCIS FCS(PE), Senior Director, and Head of Technical and Research, HKICS at 2881 6177 or [research@hkics.org.hk](mailto:research@hkics.org.hk).

Yours faithfully,

**David Fu FCIS FCS(PE)**

President

The Hong Kong Institute of Chartered Secretaries