
QUESTIONNAIRE ON PROPOSED CHANGES TO THE CORPORATE GOVERNANCE CODE AND CORPORATE GOVERNANCE REPORT ON RISK MANAGEMENT AND INTERNAL CONTROL

We invite interested parties to respond to the Consultation Paper on Risk Management and Internal Control: Review of the Corporate Governance Code and Corporate Governance Report (Consultation Paper), which can be downloaded from the HKEx website at:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201406.pdf>

This Questionnaire contains the Privacy Policy Statement; Part A: General Information of Respondents; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEx both Part A and Part B of this Questionnaire no later than 31 August 2014 by one of the following methods:

By mail or
hand delivery to: Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

Re: Consultation Paper on Risk Management and Internal Control: Review of the Corporate Governance Code and Corporate Governance Report

By fax to: (852) 2524-0149

By e-mail to: response@hkex.com.hk

Please mark in the subject line:

Re: CP on CG Review relating to Risk Management and Internal Control

Our submission enquiry number is (852) 2840-3844.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

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Purpose

From time to time we may collect your personal data such as your name, mailing address, telephone number, email address and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEx and any company of which HKEx is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

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Except to the extent you have already opted out or in future opt out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to our financial services and information services, and related financial services and information services offered by our affiliates.

If you do not wish to receive any promotional and direct marketing materials from HKEx or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels below.

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Except to the extent you have already opted out or in future opt out, we may transfer your name, mailing address, telephone number and email address to our affiliates for the purpose of enabling our affiliates to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

Other transfers of personal data

For one or more of the purposes specified above, the personal data may be:

1. transferred to our affiliates and made available to appropriate persons in our affiliates, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong; and
2. supplied to any agent, contractor or third party who provides administrative or other services to HKEx and/or any of our affiliates in Hong Kong or elsewhere.

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If you access our information or services through the HKEx website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEx website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEx website:

Session Cookies: temporary cookies that only remain in your browser until the time you leave the HKEx website, which are used to obtain and store configuration information and administer the HKEx website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEx website.

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Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEx should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEx's administrative and actual costs incurred in complying with your data access requests.

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Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

Contact us

By Post:
Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12/F., One International Finance Centre
1 Harbour View Street
Central
Hong Kong

By Email:
pdpo@hkex.com.hk

Part A General Information of the Respondent

- (1) Please state whether your response represents your personal or your company's view by checking () the boxes below and filling in the information as appropriate:

Company view

Company name*:	The Hong Kong Institute of Chartered Secretaries				
Company type*:	HKEx Participant:- <input type="checkbox"/> SEHK <input type="checkbox"/> HKFE				
	<input type="checkbox"/> HKSCC <input type="checkbox"/> SEOCH <input type="checkbox"/> HKCC				
	<input type="checkbox"/> Listed company		<input type="checkbox"/> Professional body / Industry association		
	<input type="checkbox"/> Market practitioner		<input type="checkbox"/> None of the above		
Contact person*:	Ms	Edith Shih FCIS FCS (PE)			
Title:	President				
Phone no.*:	2881 6177	Email address:	President@hkics.org.hk		

Personal view

Respondent's full name*:	Mr / Ms / Mrs _____				
Phone no.*:	_____	Email address:	_____		
Among the following, please select the one best describing your position*:					
<input type="checkbox"/> Listed company staff	<input type="checkbox"/> HKEx participant staff	<input type="checkbox"/> Retail investor			
<input type="checkbox"/> Institutional investor	<input type="checkbox"/> None of the above				

Important note: All fields marked with an asterisk (*) are mandatory. HKEx may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.

- (2) Disclosure of identity

HKEx may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should check the box below:

I/We do not wish to disclose my/our identity to the members of the public.

Signature (with Company Chop if the response represents company view)

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/cp201406.pdf>

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

1. Do you agree with our proposal to amend the title of Section C.2 of the Code to "Risk management and internal control"?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraphs 32 to 34 of the Consultation Paper. We have member's views that the UK principal based approach is to be preferred, and implementation of the proposals should not go towards the US Sarbanes-Oxley based approach.

2. Do you agree with the proposed amendments to Principle C.2 to define the roles of the board and the management, and state that the management should provide assurance to the board on the effectiveness of the risk management systems? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraphs 32 to 34 of the Consultation Paper.

3. Do you agree with our proposal to introduce an amended RBP (C.2.6) to provide that the board may disclose in the Corporate Governance Report that it has received assurance from management on the effectiveness of the issuer's risk management and internal control systems? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraphs 36 to 50 of the Consultation Paper.

4. Do you agree with the proposed amendments to CP C.2.1 to state that the board should oversee the issuer's risk management and internal control systems on an ongoing basis? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraphs 57, 66 and 67 of the Consultation Paper.

5. Do you agree with our proposal to upgrade to a CP the existing RBP C.2.3, which sets out the matters that the board's annual review should consider?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraphs 56 and 58 to 65 of the Consultation Paper.

6. Do you agree with our proposal to upgrade to a CP the existing RBP C.2.4, which sets out the particular disclosures that issuers should make in their Corporate Governance Reports in relation to how they have complied with the internal control CPs during the reporting period?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraph 69 of the Consultation Paper.

7. Do you agree with our proposal to amend the wording of proposed CP C.2.4 to simplify the requirements and remove ambiguous language, and to make clear that the risk management and internal control systems are designed to manage rather than eliminate risks? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraph 70 of the Consultation Paper.

8. In relation to proposed CP C.2.4, do you agree with our proposal to upgrade the existing recommendation that issuers disclose their procedures and internal controls for handling and disseminating inside information (Section S., paragraph (a)(ii)), and amend it to include the handling of "other regulatory compliance risks"?

Yes

No

Please give reasons for your views.

We agree with the proposal to upgrade the existing recommendation that issuers should disclose within their CG Report their procedures and internal controls for handling and disseminating inside information (existing Section S, paragraph (a)(ii)). We share member's concern with the new disclosure requirement under CP C.2.4(e) relating to "other regulatory compliance risks" on the basis that this is too general, ambiguous and unclear as to its meaning and scope of disclosure required. Please consider this aspect further for tighter language.

9. Do you agree with our proposal to upgrade to Mandatory Disclosures the following existing Recommended Disclosures in relation to internal controls (Section S.):

- (a) whether the issuer has an internal audit function;
- (b) how often the risk management and internal control systems are reviewed, the period covered, and where an issuer has not conducted a review during the year, an explanation why not;
- (c) a statement that a review of the effectiveness of the risk management and internal control systems has been conducted and whether the issuer considers them effective and adequate; and
- (d) significant views or proposals put forward by the audit committee?

Yes

No

Please give reasons for your views.

We agree with the proposed upgrade as set forth under Q9 (a) to (c). We share member's concern with Q9(d) on the basis that any significant views or proposals put forward by the audit committee would normally have been acted upon during the course of the year prior to the issue of the annual report, and disclosure of any such views or proposals within the annual report would not be meaningful to the shareholders and other stakeholders. Please consider this aspect further.

10. Do you agree with our proposal to move the existing recommendation that issuers disclose details of any significant areas of concern (Section S., paragraph (a)(ix)) to a new RBP C.2.7, and to amend the provision to widen its application by removing the reference to areas of concern "which may affect shareholders"?

Yes

No

Please give reasons for your views.

The proposed amendment clarifies the disclosure requirements.

11. Do you agree with our proposal to remove RBP C.2.5, which states that issuers should ensure their disclosures provide meaningful information and do not give a misleading impression?

Yes

No

Please give reasons for your views.

We agree that RBP C.2.5 is in all likelihood redundant and should be removed.

12. Do you agree with our proposals to remove the recommendations that issuers include in their Corporate Governance Reports:

- (a) an explanation of how the internal control system has been defined for them (Section S., paragraph (a)(i)); and
- (b) the directors' criteria for assessing the effectiveness of the internal control system (Section S., paragraph (a)(vii))?

Yes

No

Please give reasons for your views.

The proposals clarify the disclosure requirements.

13. Do you agree with our proposal to upgrade RBP C.2.6 to a CP (re-numbered C.2.5) and amend it to state that an issuer should have an internal audit function, and issuers without an internal audit function should review the need for one on an annual basis and disclose the reasons for the absence of such function in the Corporate Governance Report? Is the intention of the proposed wording sufficiently clear?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraphs 79 to 86 of the Consultation Paper.

14. Do you agree with our proposal to introduce new Notes to the proposed CP C.2.5 to clarify that:

- (a) the role of the internal audit function is to carry out the analysis and independent appraisal of the adequacy and effectiveness of an issuer's risk management and internal control systems; and
- (b) a group with multiple listed issuers may share group resources of the holding company to carry out the internal audit function for members of the group?

Yes

No

Is the intention of the proposed wording sufficiently clear? Please give reasons for your views.

We agree with the reasonings as set forth under paragraphs 80 and 88 of the Consultation Paper. We have member's view that (b) is especially important as there is need to share resources within such H-shares or PRC domestically owned enterprises with a group structure of listed issuers.

15. Do you agree with our proposal to amend the existing CP C.2.2 to state that the board's annual review should ensure the adequacy of resources, staff qualifications and experience, training programmes and budget of the issuer's internal audit function (in addition to its accounting and financial reporting functions)?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraphs 80 and 88 of the Consultation Paper.

16. Do you agree with our proposal to amend Principle C.3 in respect of audit committees and CP C.3.3 in respect of their terms of reference to incorporate "risk management" where appropriate?

Yes

No

Please give reasons for your views.

We agree with the reasonings as set forth under paragraphs 94 to 101 of the Consultation Paper.

17. Do you agree that the matter of establishing a separate board risk committee should be left to issuers to decide in accordance with their own circumstances?

Yes

No

Please give reasons for your views.

We agree. As such, consequential amendments are required to CP C3.3. There is need to acknowledge that the duties of an audit committee in respect of internal control and risk management could be effectively discharged by a separate board risk committee. Otherwise, listed issuers will technically be in non-compliance with the Corporate Governance Code where they need to "explain" which is unsatisfactory. In fact, financial services regulators frequently require establishment of separate non-executive risk committee as part of best practice, and the Listing Rules should be aligned to, and take into consideration such convergence of global standards. A point in reference is the UK Corporate Governance Code, where it is stated that the audit committee shall "review the company's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, to review the company's internal control and risk management systems.

18. What would be an appropriate period of time between the publication of the consultation conclusions and the implementation of the amendments set out in the Consultation Paper?

- Six months
- Nine months
- 12 months
- Others (please specify:)

Please give reasons for your views.

We will serve to promote the compliance culture to our members in line with market consensus, including as to timing of implementation of the proposals. However, please kindly consider providing sufficient time and education to SMEs in view of their resources, along with any practical compliance tools like checklists to promote the regulatory objectives.

- End -