
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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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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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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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 Chamber of Hong Kong Listed Companies		
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 checked="" type="checkbox"/> Professional body / Industry association <input type="checkbox"/> Market practitioner <input type="checkbox"/> None of the above		
Contact person*:	Mr/Ms/Mrs	Mike Wong	
Title:	Chief Executive Officer		
Phone no.*:	21168922	Email address:	mikewong@chkclc.org

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.

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 note that the terms ‘management’ and ‘senior management’ appear regularly in the Listing Rules but are not defined. In most cases, the issuer’s board will overlap with its management. In this respect, it will be helpful if the Stock Exchange will provide guidance as to what constitutes the management of an issuer vis-à-vis its board.

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.

Please see question 2 as regards our comment on the definition of management (which is not defined) vis-à-vis the board.

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.

In principle, we agree that the board should oversee the issuer's risk management and internal control system. However we are concerned about the phrase "on an ongoing basis" and whether this would be interpreted as a "day-to-day" responsibility for the board, in case of which the board would not have the capacity to handle. In light of this, and since we feel that the word "oversee" already indicates a continual process, the phrase "on an ongoing basis" should be taken out to eliminate the redundancy and possibility of confusion in interpretation.

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.

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.

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.

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 disclosing the procedures and internal controls for handling and disseminating inside information. Having such procedures and internal controls is a key compliance element for Part XIVA of the SFO regarding inside information disclosure. There should be no difficulty for issuers to disclose such procedures.

However, as for the inclusion of “other regulatory compliance risks”, we feel that the term is too vague and overly encompassing. A corporation is obliged to comply with a great many regulatory requirements in various aspects of their operation. Having to disclose procedures for handling all regulatory compliance risks would be too burdensome- and indeed impracticable- for companies, and even for shareholders’ consumption. As an alternative, and at most, the board should only be required to disclose that there are procedures and internal controls for handling of other regulatory compliance risks, but not to disclose the actual procedures nor details thereof.

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 disagree with points (b) and (d).

Point (b) requires disclosing “how often the risk management and internal control systems are reviewed”. This requirement is redundant. CP C.2.1 already mandates at least an annual review, failing of which needs to be explained. There is no need to state the same requirement twice.

Point (d) requires disclosure of “significant views or proposals put forward by the audit committee”. Our concern is that views or proposals might be commercially sensitive and are expressed or made in confidence. To enforce a mandatory disclosure of them is not practical. It may also be counter-productive as it may discourage views or proposals to be expressed or made knowing that they would be made public somehow.

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.

We disagree to removing the reference to “which may affect shareholders”. Ultimately, a company is responsible to its shareholders, and they should be the primary audience of the CG Code and Report. Areas of concerns affecting other stakeholders can be dealt with in the ESG Report. This will define the focus and contents of the two reports better.

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.

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.

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.

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 recommend adding a third Note here to spell out clearly an outsourced internal audit function is accepted for the purpose of compliance with this CP.

With regard to point (b) above, we welcome the provision that group resources can be shared among member companies in carrying out of the internal audit function. However this needs not be limited to resources from the holding company. A group should have the flexibility to decide which of its group company, holding or subsidiary, is best to carry out the internal audit functions for other member companies, based on expertise and resources planning and allocation. We recommend simply taking out the phrase "of the holding company".

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.

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.

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.

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.

Although 51% of issuers had reported they had an internal audit function, there is still 49% or some 850 companies that don't. These companies would need to start to hire or train people or look for third party service providers. What we don't want is for these companies to scramble for people or service providers in a short space of time, only to settle for sub-standard set up or pay high prices due to a sudden surge of demand for limited available expertise. We therefore recommend a 12-months lead time for implementation.

- End -