

Our Ref: C/CGC, M26683

31 March 2004



Hong Kong Exchanges & Clearing Limited,
11/F., One International Finance Centre,
1 Harbour View Street,
Central, Hong Kong.

Attn: Listing Unit

Dear Sirs,

**Exposure of Draft Code on Corporate Governance Practices
And Corporate Governance Report**

The Hong Kong Society of Accountants (“the Society”) has considered the above exposure paper (“the Paper”), seeking market views on the (i) timing of the proposed implementation of the Code on Corporate Governance Practices (“the Code”) and Corporate Governance Report, and on the (ii) detailed wording, with a view to removing ambiguities, providing clarity and ensuring that the language adopted in the Code is clear and concise. The Society’s comments on the Paper are provided below.

Implementation of the Revised Code

Q1. Do you support the proposed implementation timetable? If not, please specify those Code provisions that you consider it would not be possible to comply with within the expected timeframe for compliance. Please provide recommendations for alternative implementation provisions.

In general, we support the proposed implementation timetable, i.e. the Code, with the exception of C.2 on “Internal Controls” provisions, coming into effect for accounting periods commencing on or after 1 January 2005. We believe that the proposed timetable for the “Internal Controls” provisions and the proposed disclosure requirements in the Corporate Governance Report relating to listed issuers’ internal controls (i.e. implementation by 1 July 2005) is also achievable.

Notwithstanding the formal implementation timetable, the intention of which is to allow listed issuers sufficient time to put in place processes and make preparations to ensure compliance with the Code, we consider that the Stock Exchange should encourage early adoption of the Code Provisions and the Corporate Governance Report.

We acknowledge that the Stock Exchange has invited the Society to issue further guidance, developed from the guidelines set out in “Internal Control: Guidance for Directors on the Combined Code” (UK Turnbull Guidance) published in the UK in September 1999, to help listed issuers understand the proposed Code provisions and devise their internal control procedures (para. 17 of the Paper). The Society has indicated to the Stock Exchange that, in principle, it is prepared to take up the Stock Exchange’s invitation to develop guidance on internal controls, subject to clarification of various issues regarding the scope and nature of the project.

Presentation and Format

Q2. Do you support the presentation and format of the draft Code and Corporate Governance Report? If not, please provide details of your concerns and recommendations.

1. We support the requirements for listed issuers to include a report on their corporate governance practices (“Corporate Governance Report”) in their annual reports and summary financial reports (if any). We consider that the Stock Exchange should also make it clear that the Corporate Governance Report should be presented separately and prominently in the annual report.

The Society has previously made this recommendation in its publication entitled “*Corporate Governance in Annual Reports*” (March 2001) in which it is stated:

“In order to communicate to shareholders the strength of their corporate governance structures, policies and practices, listed companies and public corporations should be encouraged to include in their annual report a statement on corporate governance. Such a statement on corporate governance should be presented separately in the annual report with the same prominence as, for example, the directors' report.” (Paragraph 3.3 (i)).

2. It is noted from the draft Appendix 17 (para. 1) that the Corporate Governance Report should be prepared by the board of directors. However, there is no indication as to whether the Report would need to be dated and signed off.

We believe that the Corporate Governance Report should clearly indicate which party is responsible for it (i.e. the board of directors as a whole), and it should also be dated and signed-off by a person, usually the chairman or the company secretary, who has been formally and properly delegated with the authority to sign on behalf of the board. This was also one of the recommendations contained in “*Corporate Governance in Annual Reports*” (at Appendix 1 of the publication).

3. In order to aid communication with the readers of the annual report, and to help listed issuers to present a clear, overall picture of its corporate governance structure, arrangements, policies and practices to shareholders and investors, we consider that it would be helpful to explicitly state in Appendix 17 (paragraph 1) of the Listing Rules that all corporate governance related disclosures should be included or presented in a single Corporate Governance Report.
4. We have some doubts about the proposal, contained in the preamble of the draft Appendix 14, that “[i]ssuers may devise their own codes on no less exacting terms”. This seems to invite the proliferation of individual codes that may differ in tone and content from Appendix 14, in relation to which arguments will arise as to whether or not they are as exacting as Appendix 14. Who is to judge whether another code is “no less exacting”? In our view it would be more appropriate to allow issuers to adopt their own codes only if they either do not differ materially from or exceed the requirements of the draft Code.

Q3. Are there any ambiguities in the wording of the provisions of the Code? If so, how could these ambiguities be clarified?

The Society considers that there are some areas of the Code where greater clarity is needed. Our comments are set out, on a section-by-section basis, in the [appendix](#) to this letter.

Other Matters

There appear to be no transitional arrangements in relation to matters such as the provision of induction, covering the business, legal and regulatory requirements, for existing directors who may not previously have undergone any induction process.

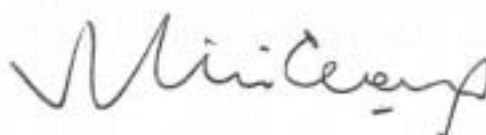
We note that the Stock Exchange has proposed, as one of the recommended best practices, that an issuer should arrange appropriate insurance cover in respect of legal action against its directors (A.1.9). We would suggest that in order to promote better corporate governance in Hong Kong, the Exchange should consider making it a compulsory requirement for issuers to arrange appropriate insurance cover for its directors, or, as a minimum, for this to be incorporated into a Code Provision. This is of particular importance given that, with effect from 31 March 2004 (with a transitional period of six months), every listed issuer is required to have three independent non-executive directors ("INEDs") on its board. We believe that the requirement for insurance to be arranged would encourage more high-calibre, professional people to act as INEDs.

As pointed out in the Paper, corporate governance best practice standards are constantly evolving. Accordingly, the ongoing relevance and effectiveness of the Code provisions and reporting requirements will need to be monitored and reviewed. We share the Stock Exchange's view that enhancement of corporate governance standards should be a progressive process, and that as a longer term aim, Hong Kong's standards should be brought into line with the best market practices and international standards.

With this in mind, we hope that the Stock Exchange will conduct periodic reviews of the Code after its implementation in an open and transparent way, with the objective, in the longer-term, of conferring on the Recommended Best Practices a status similar to that currently proposed for the Code Provisions.

We hope that you find our comments to be useful and constructive. If you have any questions on them, please contact Peter Tisman, Technical Director (Business Members & Specialist Practices) at the Society in the first instance.

Yours faithfully,



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CHIEF EXECUTIVE & REGISTRAR
HONG KONG SOCIETY OF ACCOUNTANTS

WCC/PMT/ml
Enc.