

Frequently Asked Questions Series 17 (Released on 19 December 2011/ Last Updated on 1 April 2015)

Review of the Corporate Governance Code and Associated Listing Rules “Frequently Asked Questions”

The following frequently asked questions (FAQs) are designed to help issuers to understand and comply with the Listing Rules, particularly in situations not explicitly set out in the Rules or where further clarification may be desirable.

Users of the FAQs should refer to the Rules themselves and, if necessary, seek qualified professional advice. The FAQs are not substitutes for the Rules. If there is any discrepancy between the FAQs and the Rules, the Rules prevail.

In formulating our “answers”, we may have assumed certain underlying facts, selectively summarised the Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be had to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Contact the Listing Division at the earliest opportunity with any queries.

No.	Main Board Rules	GEM Rules	Query	Response
	<u>Implementation dates</u>			
1.	(FAQ withdrawn on 1 April 2015)			
2.	3.29	5.15	If a person acted as the company secretary of Issuer A from 1990 to 2009, then became the company secretary of Issuer B in 2010, when would he have to comply with the 15-hour training requirement?	The person should comply with the new Rule for the financial year beginning on or after 1 January 2017, as his experience as the company secretary of Issuer A should be taken into consideration.
3.	(FAQ withdrawn on 1 April 2015)			
4.	(FAQ withdrawn on 1 April 2015)			

5.	(FAQ withdrawn on 1 April 2015)			
6.	(FAQ withdrawn on 1 April 2015)			
7.	(FAQ withdrawn on 1 April 2015)			
<u>Chief Executive</u>				
8.	1.01	1.01	Does “chief executive” in these Rules mean “chief executive officer”? Or does it also refer to chief financial officer, chief operations officer, etc.?	The definition of chief executive is set out in the Rules: “a person who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of a listed issuer”.
<u>Authorised Representatives</u>				
9.	3.06	5.25	Authorised Representatives will be required to provide their email addresses to the Exchange. Is this requirement applicable to existing Authorised Representatives?	Yes, it does apply to existing Authorised Representatives.
<u>Directors’ duties</u>				
10.	Note to Rule 3.08	Note to Rule 5.01	If issuers do not follow the guides named in the Note (“A Guide on Directors’ Duties” issued by the Companies Registry, and the Guidelines for Directors and Guide for Independent Non-executive Directors published by the Hong Kong Institute of Directors), do they breach the Listing Rules?	No. These guides are suggested as resources for directors looking for further guidance on their duties and responsibilities to an issuer.

11.	3.08	5.01	How does the board assess if the INEDs' or NEDs' commitment to the issuer's affairs is sufficient (especially for smaller issuers that have infrequent changes to their business or group structure) when normally they are not required to be involved in the management of the issuer?	The Code recognises that different directors have different roles and functions within the issuer. The time commitment required from a director varies from company to company and from year to year, depending on the company's operations. NEDs' time commitment to the issuer is likely to be less than EDs' because they are not involved in the day-to-day running of the business. According to the revised Code, the issuer should determine how much time it needs from each of its directors and review whether the director is meeting that requirement.
<u>Board committees</u>				
12.	3.25	5.34	Can the issuer's staff and executive directors be appointed as members of the remuneration committee as long as the committee is chaired by an INED and the majority of its members are INEDs?	Yes. The Rules do not restrict issuers from appointing their staff or executive directors to act as members of the remuneration committee, as long as a majority of the remuneration committee are INEDs and it is chaired by an INED.
<u>Company secretary training</u>				
13.	3.29	5.15	Are there any Exchange accredited training courses for the purpose of this Rule?	No. Company secretaries should attend training relevant to their duties and responsibilities that they consider appropriate. The Hong Kong Institute of Chartered Secretaries provides ECPD courses for company secretaries which would satisfy the requirements of this Rule.
13A.	3.29	5.15	Does an accountant or lawyer acting as an issuer's company secretary fulfil the requirement to attend relevant professional training each year by attending	We intend that the training be broad rather than restrictive. Where legal and accounting courses are relevant to a company secretary's role and duties, they should count towards the 15-hour training requirement.

			CPD courses on subjects such as litigation and accounting standards?	
13B.	3.29	5.15	If a person is the company secretary of an issuer that is dual-listed on the Hong Kong and Shanghai stock exchanges and attends training courses relating to PRC listing requirements and regulations (to comply with Shanghai Stock Exchange requirements), do those courses count towards the 15-hour training requirement?	As the company secretary of a Hong Kong listed company, this person should also undergo training on Hong Kong rules and regulations. However, the Exchange does not prescribe specific types of courses that a company secretary should attend, as long as they are relevant to his professional duties. If the training courses are of a general nature (e.g. a course on corporate governance), and not specifically on any PRC rules and regulations, then they may count towards the 15-hour training requirement.
13C.	3.29, Code Provision A.6.5 and Paragraph I(i)	5.15, Code Provision A6.5 and Paragraph I(i)	Would the seminars organised by the Exchange be considered acceptable training for directors and company secretaries?	Yes, they would normally count towards directors' and company secretaries' training.
<u>Voting by poll</u>				
14.	Note to Rule 13.39(4)	Note to Rule 17.47(4)	Are there any examples of procedural and administrative matters?	Procedural and administrative matters include, for example, adjourning a meeting by resolution to: <ul style="list-style-type: none"> (a) ensure orderly conduct of the meeting (e.g. if the meeting facilities to house the number of members attending has become inadequate); or (b) maintain the orderliness of the meeting, e.g. if it becomes impossible to ascertain the views of the members, or there is disorder or threat of disorder from members or if there is a disturbance caused by members or the uninvited public; or (c) respond to an emergency such as a fire, a serious accident or hoisting of tropical cyclone

				<p>warning signal No. 8 during a meeting; or</p> <p>(d) announce results at the end of the annual general meeting.</p>
<p><u>Removing 5% threshold for voting on a resolution in which a director has an interest</u></p>				
15.	13.44 and Note 1 to Appendix 3	17.48A and Note 5 to Appendix 3	If a director is a shareholder of the issuer, should he abstain from voting when the board considers dividend payments?	No. If the director's interest is the same as all shareholders, as in the case of approving dividend payments, then he need not abstain from voting.
15A.	13.44 and Note 1 to Appendix 3	17.48A and Note 5 to Appendix 3	If a director has a material interest in a board resolution approving a transaction concerning another company, but does not have any beneficial interest in the shares of that company, should he abstain from voting on the relevant resolution?	Yes. As long as the director has a material interest in the transaction, he should abstain from voting, even if he has no beneficial interest in the shares of the other company.
15B.	13.44	17.48A	Is it acceptable for an issuer to simply comply with this new Rule without amending its memorandum and articles of association (to remove the exception for a director voting on a resolution in which he has a less than 5% interest) until further substantial changes are required to be made to the documents?	Yes, an issuer does not need to amend its constitutional document as a result of this Rule amendment.
<p><u>Directors/Supervisors/Chief Executives' information</u></p>				
16.	13.51	17.50	In the case of the resignation, retirement or removal of a director, supervisor or chief executive, will an issuer also	No, it is not intended that when a director, supervisor or chief executive resigns, retires or is removed that the announcement should contain the items listed under (a) to (x) of Rule 13.51(2)/GEM Rule

			be required to make the disclosures set out in (a) to (x) of Rule 13.51(2)/GEM Rule 17.50(2)?	17.50(2).
<u>Publishing procedures for election of directors</u>				
17.	13.51D	17.50C	Can issuers publish on their websites the procedures for director election in a single language (i.e. English or Chinese only)?	No, they must be published in both English and Chinese.
<u>Shareholders' approval to appoint and remove an auditor</u>				
18.	13.88	17.100	Is an issuer required to seek shareholder approval for the appointment of a new auditor if the existing auditor resigns before the end of his term of office?	Shareholder approval is not required for the appointment of an auditor to fill a casual vacancy during the year. However, the issuer must seek shareholder approval for the formal appointment of the auditor at the next annual general meeting.
<u>Publishing constitutional documents on websites</u>				
19.	13.90	17.102	Can issuers publish their constitutional documents in a single language (i.e. English or Chinese only)?	No, the constitutional documents must be published in both English and Chinese.
19A.	13.90	17.102	If we translate our constitutional document, would both languages be of equal effect?	For translation of constitutional documents, you should specify which of the two languages (Chinese or English) prevail in case of discrepancies or inconsistencies.
19B.	13.90	17.102	Do issuers have to publish their constitutional documents by way of an announcement? Which announcement headline(s) should they use?	Issuers do not need to publish their constitutional documents by way of an announcement. They may select the current Tier One Headline Category – Constitutional Documents when submitting their documents for publication on the HKExnews website.
19C.	13.90	17.102	If an issuer has amended its	The issuer is required to publish a consolidated

			constitutional documents (memorandum and articles of association, bye-laws or other equivalent constitutional document) many times over the years since its incorporation, is it required to post to the Exchange website its documents incorporating all the previous amendments?	version of the constitutional document which has incorporated all the changes. This may be a conformed copy or a consolidated version not formally adopted by shareholders at a general meeting. However, if the issuer does so, the front page of the published constitutional document should include a statement that it is a conformed copy or a consolidated version not formally adopted by shareholders at a general meeting.
19D.	13.90	17.102	My company is a Bermuda company and in order to publish a consolidated version of the constitutional document, we need to obtain shareholder and court approval and register the consolidated constitutional document with the Bermuda Companies Registry.	See response to Question 19C above.
THE REVISED CORPORATE GOVERNANCE CODE				
<u>Publication of various documents on HKEx website and issuers' websites</u>				
20.	Code Provision A.3.2	Code Provision A.3.2	The amended Code Provision A.3.2 requires publication of an updated list of directors identifying their role and function. Please clarify the information that should be disclosed in this list of directors.	An issuer should identify whether each director is an executive director, non-executive director or independent non-executive director and, if applicable, specify his role in the company (e.g. chairman of the board, chief executive, chief financial officer, member or chairman of the audit/nomination/remuneration/other board committee(s), etc.).
20A.	(FAQ withdrawn on 1 April 2015)			

20B.	Code Provisions A.3.2, A.5.3, B.1.3 and C.3.4	Code Provisions A.3.2, A.5.3, B.1.3 and C.3.4	Can an issuer publish the terms of reference of its board committees and its list of directors in a single language (i.e. English or Chinese only)?	No, these documents must be published in both English and Chinese.
20C.	Code Provisions A.3.2, A.5.3, B.1.3 and C.3.4	Code Provisions A.3.2, A.5.3, B.1.3 and C.3.4	Does an issuer have to publish the terms of reference of its board committees and its list of directors by way of an announcement?	No, the terms of references do not need to be published in an announcement format. An issuer should select the current Tier 1 Headline Categories for Announcements and Notices, under which the following new Headline Categories will be added: (a) List of Directors and their Role and Function (b) Terms of Reference of the Audit Committee (c) Terms of Reference of the Remuneration Committee (d) Terms of Reference of the Nomination Committee
20D.	Code Provisions A.3.2, A.5.3, B.1.3 and C.3.4	Code Provisions A.3.2, A.5.3, B.1.3 and C.3.4	If an issuer amends the terms of reference of its board committees and/or amends its list of directors from time to time: (a) What is the expected timing for issuers to post the updated documents on the HKExnews website and on its own website? (b) If an issuer announces on 22 February that a new director will be appointed with effect from 25 April, should it upload the new list of directors at the earlier or later date?	(a) Issuers are expected to post the updated documents as soon as reasonably practicable after the changes have come into effect. (b) In this case, the issuer may upload the new list of directors onto its and the HKExnews website on or before 25 April.
<u>An INED who has served nine years</u>				

21.	Code Provision A.4.3	Code Provision A.4.3	If an INED has served an issuer for 9 years or more, is it necessary to re-elect him every year at the AGM (using a separate AGM resolution), or can we continue with the re-election on the regular rotation basis (e.g. every 2 years)?	No, the issuer does not need to re-elect the INED who has served more than 9 years every year. The issuer should continue to re-elect the INED on the regular rotation basis.
<u>Directors' training</u>				
22.	Code Provision A.6.5		Are there any Exchange accredited training courses for the purpose of this Code Provision?	No. Directors should attend training relevant to their duties and responsibilities that they consider appropriate.
22A.	Code Provision A.6.5 and Paragraph I(i)	Code Provision A.6.5 and Paragraph I(i)	Is there any prescribed form of training for directors? Is appropriate directors' training restricted to classes or seminars?	The Code Provision on directors' training can be satisfied in a number of ways, e.g. by attending in-house briefings, by giving talks, by attending training relevant to the issuer's business conducted by lawyers, even by reading material relevant to the director's duties and responsibilities.
22B.	Code Provision A.6.5 and Paragraph I(i)	Code Provision A.6.5 and Paragraph I(i)	If a director sits on the board of several issuers, can the same training record be provided to each issuer in order to comply with this Code Provision and disclosure requirement?	Yes, he can provide the same training record to all the issuers.
<u>Senior management</u>				
23.	Code Provisions A.7.2, B.1.2, B.1.5, B.1.8, C.3.3, D.3.1 and Paragraph Q	Code Provisions A.7.2, B.1.2, B.1.5, B.1.8, C.3.3, D.3.1 and Paragraph Q	Are there any particular criteria for defining "senior management"?	Senior management is the same category of persons referred to in the issuer's annual report.
<u>Monthly management updates</u>				
24.	Code Provision C.1.2	Code Provision C.1.2	If the monthly management accounts have been reviewed	No. Monthly management accounts need not contain inside information ¹ . Under normal

			by directors, is there any change to the blackout period for directors regarding their dealings in the issuers' shares?	<p>circumstances, where the issuer's performance is in line with market expectations based on previous disclosure by the issuer, it is unlikely that a director would be precluded from dealing in the issuer's securities just because he received monthly accounts from management. If, however, the monthly management accounts reveal inside information¹, the director would be precluded from dealing in the issuer's securities until the information has been disseminated to the market.</p> <p><i>Note:</i></p> <p>1. <i>Amendment made in light of the Rule changes consequential on the statutory backing to issuers' continuing obligation to disclose inside information, which became effective on 1 January 2013. (Added in January 2013)</i></p>
24A.	Code Provision C.1.2	Code Provision C.1.2	Should the issuer send the monthly management accounts/management updates to directors 60 days after the month end? Is there a deadline?	<p>Monthly updates should be provided to directors as soon as practicable after the month-end. Although the Code Provision does not specify a deadline, it will not be useful for directors if they receive the information two months after the month-end. Directors will not be able to monitor the issuer's financial affairs and inside information¹ disclosure unless the information is timely.</p> <p><i>Note:</i></p> <p>1. <i>Amendment made in light of the Rule changes consequential on the statutory backing to issuers' continuing obligation to disclose inside information, which became effective on 1 January 2013. (Added in January 2013)</i></p>

<u>Director’s letter of appointment</u>				
25.	Code Provision D.1.4	Code Provision D.1.4	Does this new Code Provision apply to the appointment of new directors as well as to existing directors? What are the key terms and conditions that need to be included in the letter of appointment?	Yes. There should be a letter of appointment for existing as well as new directors. We will not specify the terms and conditions of the letter of appointment and will leave it to the issuers to decide.
<u>Bundling of resolutions</u>				
26.	Code Provision E.1.1	Code Provision E.1.1	Please give an example of “bundling” resolutions. Would the amendment of several articles included in one special resolution be considered “bundling”?	If an amendment to the issuer’s articles of association is likely to be controversial, the resolution in respect of the amendment should not be “bundled” with the less controversial resolutions. This is so even if the other resolutions are related to the controversial resolution.
<u>Company secretary</u>				
27.	Code Provision F.1.1	Code Provision F.1.1	If a company secretary serves a group of issuers, but is an employee of only one of these issuers, would this be considered a deviation from the Code Provision?	No, it would not be considered as a deviation from the Code Provision.
28.	Code Provision F.1.3	Code Provision F.1.3	This new Code Provision states that the company secretary should report to the chairman and/or the chief executive. Is this requirement applicable to an external service provider acting as company secretary?	The Code Provision does not intend for external service providers to report to the chairman and/or the chief executive.
29.	Appendix 14, Paragraph L(c)	Appendix 15, Paragraph L(c)	Regarding the disclosure of directors’ attendance at committee meetings, does the	No, the mandatory disclosure requirement for directors’ attendance at board committee meetings under this Rule only relates to the remuneration

			Exchange expect that such disclosure should cover the directors' attendance at all board committees (not merely the audit, nomination and remuneration committees which are mentioned in the Listing Rules)?	committee, nomination committee, audit committee and the corporate governance function of the board (or a committee delegated by the board responsible for corporate governance matters).
<u>Notes under Code provisions</u>				
30.	Note(s) under Code Provision(s)	Note(s) under Code Provision(s)	Is a Note under a Code Provision subject to “comply or explain”?	No, it is not. A Note is normally to clarify the meaning or illustrate the practical application of the Code Provision.