

A horizontal strip of blurred images showing various scenes of business and technology, including people in meetings, computer screens, and abstract light patterns.

JONES DAY WHITE PAPER

RECENT CHANGES TO THE CORPORATE GOVERNANCE CODE AND ASSOCIATED RULES GOVERNING THE LISTING OF SECURITIES ON THE STOCK EXCHANGE OF HONG KONG LIMITED AND THE PRACTICAL IMPLICATIONS ON LISTED ISSUERS

The Stock Exchange of Hong Kong Limited (“HKEx”) published the Consultation Conclusions on Review of the Corporate Governance Code and Associated Rules Governing the Listing of Securities (the “Listing Rules”) on 28 October 2011. It includes amendments to (1) the associated Listing Rules; (2) the code provisions (the “Code Provisions”); (3) the recommended best practices (“RBP”); and (4)

the existing Appendix 23 (which is to be incorporated into the new Corporate Governance Code) to include additional mandatory disclosure requirements in the corporate governance report. We set out below a summary table of the proposed amendments, the various implementation dates and the practical recommendations to all listed issuers under the new regime.

(A) AMENDMENTS TO ASSOCIATED LISTING RULES

(requires mandatory compliance)

AMENDMENT	IMPLEMENTATION DATE	ACTIONS/RECOMMENDATIONS
<p>Rule 3.08—Directors’ duties</p> <p>HKEx added a note to Rule 3.08 referring to the duties summarized in “A Guide on Directors’ Duties” issued by the Companies Registry and the Guide for Directors and the Guide for Independent Non-executive Directors published by the Hong Kong Institute of Directors (www.hkiod.com).</p>	1 Jan 2012	Listed issuers to notify each of the directors of the new guidelines and provide a copy of the guidelines as set out in the note to Rule 3.08 to remind them of their duties and obligations under the amended Listing Rules.
<p>Rules 3.10A and 3.11—INED to form one-third of the board of directors</p> <p>An issuer must appoint independent non-executive directors (“INEDs”) representing at least one-third of the board.</p>	By 31 Dec 2012	Listed issuers to review the total number of the INEDs and board members and evaluate how many additional INEDs it has to appoint before 31 December 2012.
<p>Rules 3.25 to 3.27—Remuneration committee</p> <ul style="list-style-type: none"> • An issuer must establish a remuneration committee chaired by an INED and comprising a majority of INEDs. • Written terms of reference shall be approved by the board of directors and shall clearly establish its authority and duties. 	1 Apr 2012	Listed issuers to review the composition of the remuneration committee and the terms of reference. Please note that going forward, if any listed issuer at any time fails to meet any of the requirements under Rules 3.25 and 3.26, it is required to immediately publish an announcement containing the relevant details and reasons and shall re-comply within three months after the noncompliance.
<p>Rule 13.44—Removing 5% threshold for voting on resolution in which a director has an interest at board meetings</p> <p>Any director shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his associates has a material interest, nor shall he be counted in the quorum present at the meeting. The threshold of 5% interest and being interested only by virtue of being an officer or any executive or shareholder under note 3 to Appendix 3 will no longer be applicable as an exemption under Rule 13.44 effective from 1 January 2012.</p>	1 Jan 2012	<p>Listed issuers to bring to the attention of all the directors this new voting restriction, and the relevant director(s) has to abstain from voting if he or any of his associates has a material interest (even if he has no beneficial interest in the shares of the other company) in the contract, arrangement or other proposal to be approved at the board meeting.</p> <p>However, 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.</p>

AMENDMENT	IMPLEMENTATION DATE	ACTIONS/RECOMMENDATIONS
<p>Rule 13.51—Notifying directorship and chief executive officer change and disclosure of director's information</p> <p>An issuer shall publish an announcement regarding appointment, resignation, re-designation, retirement or removal of chief executive, directors or supervisors containing details set out in Rule 13.51, including, but not limited to, the reasons for the change and his remuneration.</p>	1 Jan 2012	No action shall be taken at this stage unless there are any changes. In particular, the listed issuer is to note the two new additions to the existing Rule 13.51: (1) the new Rule 13.51 covers change of chief executive who is not a director and (2) "changes" will include retirement or removal (the existing rule only covers appointment, resignation and re-designation).
<p>Rule 13.25A—Next day disclosure for a director of the issuer's subsidiaries exercising an option for shares in the issuer</p> <ul style="list-style-type: none"> Remove the requirement to publish a Next Day Disclosure Form following the exercise of an option for shares in the issuer by a director of its subsidiaries. Options for shares in the issuer exercised by a director of a subsidiary triggers an announcement only if the change in its share capital, individually or when aggregated with other events, is 5% or more since its last Monthly Return. 	1 Jan 2012	The listed issuers and all the directors of the subsidiaries of the listed issuers to note the revised disclosure requirements.
<p>Rules 13.39(4)(5)—Voting by poll at the shareholders' general meeting</p> <ul style="list-style-type: none"> Allow a chairman at a general meeting to exempt certain prescribed procedural and administrative matters from a vote by poll.¹ Clarification of disclosure in poll results announcement. Flexible timing of explanation of polling procedures—deleted the words "at the commencement of the meeting." 	1 Jan 2012	Listed issuers to notify all directors the new exemption on voting by poll and the disclosure requirements for a poll results announcement.

¹ As stated in the note to Rule 13.39(4), procedural and administrative matters are those that: (i) are not on the agenda of the general meeting or in any supplementary circular to members; and (ii) relate to the chairman's duties to maintain the orderly conduct of the meeting and/or allow the business of the meeting to be properly and effectively dealt with, while allowing all shareholders a reasonable opportunity to express their views.

The HKEx published FAQs (Series 16) listing out the examples of procedural and administrative matters, which include adjourning a meeting by resolution to: (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 warning signal No. 8 during a meeting; or (d) announce results at the end of the annual general meeting.

AMENDMENT	IMPLEMENTATION DATE	ACTIONS/RECOMMENDATIONS										
Rule 13.88—Shareholders’ approval to appoint and remove an auditor <ul style="list-style-type: none">For appointment at AGM or removal of auditor before the term of his office, it is required to send a circular containing any written representation from the auditor to shareholders.The auditor must be allowed to make a written and/or verbal representation at the general meeting to remove him.	1 Jan 2012	No action to be taken unless appointing or removing auditors prior to expiration of his term of office.										
Rule 13.90—Publishing updated and consolidated version of its constitutional documents on the its own web site and the HKEx web site	1 Apr 2012	Listed issuers to publish the up-to-date consolidated version of their constitutional documents on the HKEx web site (and their own web sites) as soon as possible after 1 January 2012 but in any event no later than 1 April 2012.										
Rule 13.51D—Publishing procedures for shareholders to propose a person for election as a director on its web site	1 Apr 2012	Listed issuers to publish such procedures on their web sites on or before 1 April 2012.										
Rules 3.28 and 3.29—Company secretaries <ul style="list-style-type: none">Sets out the academic or professional qualifications that the HKEx considers acceptable—member of Hong Kong Institute of Chartered Secretaries, a lawyer or an accountant.Clarifies the factors HKEx would consider in assessing “relevant experience”—length of employment with an issuer, training received, familiarity with the Listing Rules and relevant laws, and qualifications in other jurisdiction.Requires company secretaries to have 15 hours of professional training in a financial year.Removes the requirement for a company secretary to be ordinarily resident in Hong Kong. <p><i>Note: The listed issuers and the company secretaries shall also refer to the new Section F of the revised Corporate Governance Code setting out the roles and responsibilities of a company secretary.</i></p>	1 Jan 2012 <i>(Transitional arrangement—staggered according to the date of appointment of an individual as company secretary of an issuer)</i>	<p>The company secretary to note that he or she will be subject to the new Rule 3.29 and has to complete no less than 15 hours of professional training. The listed issuers to check the appointment date of the company secretary and note the staggering implementation dates of this rule:</p> <table><tr><th>APPOINTMENT DATE</th><th>IMPLEMENTATION DATE</th></tr><tr><td>On or after 1 Jan 2005</td><td>For the financial year commencing on or after 1 Jan 2012</td></tr><tr><td>Between 1 Jan 2000 and 31 Dec 2004</td><td>For the financial year commencing on or after 1 Jan 2013</td></tr><tr><td>Between 1 Jan 1995 and 31 Dec 1999</td><td>For the financial year commencing on or after 1 Jan 2015</td></tr><tr><td>On or before 31 Dec 1994</td><td>For the financial year commencing on or after 1 Jan 2017</td></tr></table> <p>The Hong Kong Institute of Chartered Secretaries provides ECPD courses for company secretaries which would satisfy the requirements of this Listing Rule.</p>	APPOINTMENT DATE	IMPLEMENTATION DATE	On or after 1 Jan 2005	For the financial year commencing on or after 1 Jan 2012	Between 1 Jan 2000 and 31 Dec 2004	For the financial year commencing on or after 1 Jan 2013	Between 1 Jan 1995 and 31 Dec 1999	For the financial year commencing on or after 1 Jan 2015	On or before 31 Dec 1994	For the financial year commencing on or after 1 Jan 2017
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Between 1 Jan 2000 and 31 Dec 2004	For the financial year commencing on or after 1 Jan 2013											
Between 1 Jan 1995 and 31 Dec 1999	For the financial year commencing on or after 1 Jan 2015											
On or before 31 Dec 1994	For the financial year commencing on or after 1 Jan 2017											

(B) AMENDMENTS TO THE CODE PROVISIONS (IMPLEMENTATION DATE: 1 APRIL 2012)

(requires explanation if there is any deviation from the principles in the next corporate governance report commencing from 1 April 2012)

SUBJECT	CODE PROVISION	SUMMARY	RECOMMENDATIONS
Directors' time commitments	A.1 A.6.6	The board should regularly review the time contribution by a director. Directors should inform the issuer of any change to their significant commitments (e.g., the number and nature of offices held in public companies or organizations and other significant commitments) in a timely manner.	The board of directors to note.
Directors' training	A.6.5	Directors should provide records of training they received to issuers. The issuer should be responsible for arranging and funding suitable training, placing an appropriate emphasis on the roles, functions and duties of a listed company director.	Listed issuers to arrange relevant training programs. Each of the directors to note and provide the training records. The directors should attend training relevant to their duties and responsibilities that they consider appropriate and relevant.
An INED who has served nine years	A.4.3	If an INED serves more than nine years, his further appointment should be subject to a separate resolution to be approved by shareholders. The company shall also give reasons why the board believes that such INED is still independent and should be re-elected.	Listed issuers and all the INEDs to note.
List of directors	A.3.2	An issuer should maintain on its web site and on the HKEx's web site an updated list of its directors identifying their role and function and whether they are INEDs.	Listed issuers may publish an updated list of directors and their role and function on the HKEx and their web sites starting from 1 January 2012.
Remuneration committee	B.1.1–B.1.4	<ul style="list-style-type: none"> • The issuer to choose between two models (1) the remuneration committee to determine with delegated responsibility the remuneration packages of individual EDs and senior management or (2) the remuneration committee to make recommendation to the board on remuneration packages of individual EDs and senior management. • Access to independent professional advice if necessary. • Sets out the minimum content requirements for the written terms of reference. • Required publication of the written terms of reference on the company and HKEx web sites. 	The board of directors and the remuneration committee to note and review the written terms of reference to ensure compliance with the new Code Provisions. Listed issuers may arrange for publication of the terms of reference from 1 January 2012.

SUBJECT	CODE PROVISION	SUMMARY	RECOMMENDATIONS
Nomination committee	A.5.1- A.5.5	<ul style="list-style-type: none"> • New requirements on composition (majority of INEDs and chaired by the chairman of the board or an INED). • Specifies the duties of the nomination committee in A.5.2. • Requires written terms of reference and publication of the same on the company and HKEx web sites. • Issuers shall provide independent professional advice, at the issuer's expenses, to the nomination committee. 	<p>Listed issuers to note the new requirements on the establishment and composition of the nomination committee.</p> <p>Each of the listed issuers are required to establish a written terms of reference as required under the new Code Provision and may publish the same starting from 1 January 2012.</p>
Corporate governance functions	D.3.1–D.3.2	<p>The board shall be responsible for performing the corporate governance duties or it may delegate the responsibility to a committee or committees. The terms of reference shall include at least the following:</p> <ul style="list-style-type: none"> • Develop and review an issuer's policies and practices on corporate governance and make recommendations to the board. • Review and monitor the training and continuous professional development of directors and senior management. • Review and monitor the issuer's policies and practices on compliance with legal and regulatory requirements. • Develop, review and monitor the code of conduct and compliance manual (if any) applicable to employees and directors. • Review the issuer's compliance with the code and disclosure in the Corporate Governance Report. 	<p>Listed issuers to consider whether to delegate these corporate governance supervisory functions to an executive committee and, if so, it shall ensure that the relevant terms of reference cover the scope as required under the new Code Provisions.</p>
Audit committee	C.3.7 C.3.3(e)(i) C.3.4	<ul style="list-style-type: none"> • Upgrades to a Code Provision the RBP requirement that the terms of reference should include arrangements for employee to raise concerns about financial reporting improprieties. • The audit committee should meet the external auditor at least twice a year. • Required publication of the terms of reference on the HKEx and issuer web sites. 	<p>The board of directors and the audit committee to note the new requirements and revise the terms of reference to include arrangements for employee to raise concerns about financial reporting improprieties.</p> <p>All the listed issuers may arrange for publication of the terms of reference from 1 January 2012.</p>
Disclosure of senior management remuneration	B.1.5	<p>Disclose the details of any remuneration payable to members of senior management by band in the annual reports.</p>	<p>Listed issuers to note.</p>

SUBJECT	CODE PROVISION	SUMMARY	RECOMMENDATIONS
Directors' attendance at board meetings	A.1.7	Subject to the issuer's constitutional documents and the laws and regulations of its place of incorporation, it may count attendance by electronic means as attendance at a physical board meeting.	The board of directors to note.
Chairman	A.2.4–A.2.9	New Code Provisions placing greater emphasis on the roles and responsibilities of the chairman.	The chairman of the board to note.
Providing monthly updates to board members	C.1.2	<p>New Code Provision requiring that the management should provide monthly updates to board members to enable them to discharge their duties.</p> <p>The information provided may include background or explanatory information relating to matters to be brought before the board, copies of disclosure documents, budgets, forecasts and monthly and other relevant internal financial statements such as monthly management accounts and management updates. For budgets, any material variance between the projections and actual results should also be disclosed and explained.</p>	The management and the board of directors to note.
Disclosing long-term basis on which an issuer generates or preserves business value	C.1.4	The annual report should include an explanation of the basis on which the company generates or preserves the business value over the long term and the strategy for delivery of the objectives of the company.	The board of directors to note.
Directors' insurance	A.1.8	The issuer should arrange appropriate insurance coverage for directors.	Listed issuers to review the insurance policy.
Notice of meeting and bundling of resolutions	E.1.1	Issuer should avoid "bundling" resolutions at the shareholders' general meetings and, where they are "bundled," explain the reasons and material implications in the notice of the meeting.	The board of directors to note.
Directors' attendance	A.6.7 A.6.8 E.1.2	<ul style="list-style-type: none"> NEDs and INEDs should attend board, committee and general meetings and contribute to the issuer's strategy and policies. The Chairman should invite the chairmen of the audit, remuneration, nomination and any other committees to attend the AGM. 	All NEDs and INEDs to note.
Auditor's attendance	E.1.2	Management should ensure that external auditors attend the AGM to answer questions about the conduct of the audit, the preparation, the accounting policies and auditors' independence.	Listed issuers shall inform their external auditor of the new attendance requirements.
Communication policy	E.1.4	Issuers should establish a shareholder communication policy and review it on a regular basis to ensure its effectiveness.	Listed issuers to note.

(C) AMENDMENTS TO RBP (IMPLEMENTATION DATE: 1 APRIL 2012)

(encouraged to comply but will not be required to explain for any deviation or noncompliance)

AMENDMENTS	RBP	SUMMARY	RECOMMENDATIONS
Remuneration committee	B.1.6–B.1.8	<ul style="list-style-type: none"> • If the board resolves to approve any remuneration arrangements with which the remuneration committee disagrees, the board should disclose the reasons for its resolutions in the next corporate governance report. • Removes the requirement to disclose the remuneration in the accounts (but remains required to disclose in the annual report). 	The board of directors and the remuneration committee to note.
Audit committee	C.3.8	The audit committee should establish a whistleblowing policy and system for employees to raise, in confidence, concerns or any possible improprieties.	The board of directors and the audit committee to consider.
Board evaluation	B.1.9	The board should conduct a regular evaluation of its performance.	The board of directors to note.

(D) ADDITIONAL MANDATORY DISCLOSURE REQUIREMENTS (IMPLEMENTATION DATE: 1 APRIL 2012)

HKEx proposes amending the existing Appendix 23, and there will be a new consolidated Appendix 14 setting out the mandatory disclosure requirements (paragraphs G to P) that must be included in the corporate governance

report. Each of the listed issuers shall be aware of these additional mandatory requirements and include the relevant information in the corporate governance report covering the period after 1 April 2012.

AREA	NEW PARAGRAPH	SUMMARY
Board of directors	Para I(c)(d)	<ul style="list-style-type: none"> • Disclose directors' attendance at board and general meetings by name. • For each named director, the number of board or committee meetings he attended and separately the number of board or committee meetings attended by his alternate (which should not be counted as attendance by the director himself).
Board committees	Para L(d)	<p>Disclose a summary of the work done by the following committees during the year, including:</p> <ul style="list-style-type: none"> • the remuneration committee (also disclose which of the models of remuneration committee described in B.1.2(c) was adopted). • the nomination committee. • the audit committee (also disclose the details of noncompliance with Rule 3.21 and an explanation of the remedial steps taken). <p>For corporate governance, determining the policy for corporate governance of the issuer, and duties performed by the board or the committee(s).</p>
Shareholders' right	Para O	<p>Disclose:</p> <ul style="list-style-type: none"> • how shareholders can convene an EGM. • the procedures by which inquiries may be put to the board and sufficient contact details to enable these inquiries to be properly directed. • the procedures and sufficient contact details for putting forward proposals at shareholders' meetings.
Investor relations	Para P	Disclose any significant changes in the issuer's constitutional documents during the year.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or any of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com.

Joseph Lee

Hong Kong

+852.3189.7218

josephlee@jonesday.com

Eve Chan

Hong Kong

+852.3189.7252

echan@jonesday.com

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