

Appendix 15

CORPORATE GOVERNANCE CODE AND CORPORATE GOVERNANCE REPORT

The Code

This Code sets out the principles of good corporate governance, and two levels of recommendations: (a) code provisions; and (b) recommended best practices.

Issuers are expected to comply with, but may choose to deviate from, the code provisions. The recommended best practices are for guidance only. Issuers may also devise their own code on corporate governance on the terms they consider appropriate.

Issuers must state whether they have complied with the code provisions for the relevant accounting period in their half-year reports (and summary half-year reports, if any) and annual reports (and summary financial reports, if any).

Every issuer must carefully review each code provision and, where it deviates from any of them, it must give considered reasons:

- (a) in annual reports (and summary financial reports), in the Corporate Governance Report; and*
- (b) in half-year reports (and summary half-year reports), either:
 - (i) by giving considered reasons for each deviation; or*
 - (ii) to the extent that it is reasonable and appropriate, by referring to the Corporate Governance Report in the preceding annual report, and providing details of any changes with considered reasons for any deviation not reported in that annual report. The references must be clear and unambiguous and the half-year report (or summary half-year report) must not contain only a cross-reference without any discussion of the matter.**

Issuers are encouraged, but not required, to state whether they have complied with the recommended best practices and give considered reasons for any deviation.

Corporate Governance Report

Issuers must include a Corporate Governance Report prepared by the board of directors in their summary financial reports (if any) under rule 18.81 and annual reports under rule 18.44. The Corporate Governance Report must contain all the information set out in Paragraphs G to Q of this Appendix. Any failure to do so will be regarded as a breach of the GEM Listing Rules.

To a reasonable and appropriate extent, the Corporate Governance Report included in an issuer's summary financial report may be a summary of the Corporate Governance Report contained in the annual report and may also incorporate information by reference to its annual report. The references must be clear and unambiguous and the summary must not only contain a cross-reference without any discussion of the matter. The summary must contain, as a minimum, a narrative statement indicating overall compliance with and highlighting any deviation from the code provisions.

Issuers are also encouraged to disclose information set out in Paragraphs R to T of this Appendix in their Corporate Governance Reports.

What is “comply or explain”?

1. *The Code sets out a number of “principles” followed by code provisions and recommended best practices. It is important to recognise that the code provisions and recommended best practices are not mandatory rules. The Exchange does not envisage a “one size fits all” approach. Deviations from code provisions are acceptable if the issuer considers there are more suitable ways for it to comply with the principles.*
2. *Therefore, the Code permits greater flexibility than the Rules, reflecting that it is impractical to define in detail the behaviour necessary from all issuers to achieve good corporate governance. To avoid “box ticking”, issuers must consider their own individual circumstances, the size and complexity of their operations and the nature of the risks and challenges they face. Where an issuer considers a more suitable alternative to a code provision exists, it should adopt it and give reasons. However, the issuer must explain to its shareholders why good corporate governance was achieved by means other than strict compliance with the code provision.*
3. *Shareholders should not consider departures from code provisions and recommended best practices as breaches. They should carefully consider and evaluate explanations given by issuers in the “comply or explain” process, taking into account the purpose of good corporate governance.*
4. *An informed, constructive dialogue between issuers and shareholders is important to improving corporate governance.*

PRINCIPLES OF GOOD GOVERNANCE, CODE PROVISIONS AND RECOMMENDED BEST PRACTICES

A. DIRECTORS

A.1 The Board

Principle

An issuer should be headed by an effective board which should assume responsibility for its leadership and control and be collectively responsible for promoting its success by directing and supervising its affairs. Directors should take decisions objectively in the best interests of the issuer.

The board should regularly review the contribution required from a director to perform his responsibilities to the issuer, and whether he is spending sufficient time performing them.

Code Provisions

A.1.1 The board should meet regularly and board meetings should be held at least four times a year at approximately quarterly intervals. It is expected regular board meetings will normally involve the active participation, either in person or through electronic means of communication, of a majority of directors entitled to be present. So, a regular meeting does not include obtaining board consent through circulating written resolutions.

A.1.2 Arrangements should be in place to ensure that all directors are given an opportunity to include matters in the agenda for regular board meetings.

- A.1.3 Notice of at least 14 days should be given of a regular board meeting to give all directors an opportunity to attend. For all other board meetings, reasonable notice should be given.
- A.1.4 Minutes of board meetings and meetings of board committees should be kept by a duly appointed secretary of the meeting and should be open for inspection at any reasonable time on reasonable notice by any director.
- A.1.5 Minutes of board meetings and meetings of board committees should record in sufficient detail the matters considered and decisions reached, including any concerns raised by directors or dissenting views expressed. Draft and final versions of minutes should be sent to all directors for their comment and records respectively, within a reasonable time after the board meeting is held.
- A.1.6 There should be a procedure agreed by the board to enable directors, upon reasonable request, to seek independent professional advice in appropriate circumstances, at the issuer's expense. The board should resolve to provide separate independent professional advice to directors to assist them perform their duties to the issuer.
- A.1.7 If a substantial shareholder or a director has a conflict of interest in a matter to be considered by the board which the board has determined to be material, the matter should be dealt with by a physical board meeting rather than a written resolution. Independent non-executive directors who, and whose close associates, have no material interest in the transaction should be present at that board meeting.
- Note: Subject to the issuer's constitutional documents, and the law and regulations of its place of incorporation, a director's attendance by electronic means including telephonic or videoconferencing may be counted as attendance at a physical board meeting.*
- A.1.8 An issuer should arrange appropriate insurance cover in respect of legal action against its directors.

A.2 Chairman and Chief Executive

Principle

There are two key aspects of the management of every issuer - the management of the board and the day-to-day management of business. There should be a clear division of these responsibilities to ensure a balance of power and authority, so that power is not concentrated in any one individual.

Code Provisions

- A.2.1 The roles of chairman and chief executive should be separate and should not be performed by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established and set out in writing.
- A.2.2 The chairman should ensure that all directors are properly briefed on issues arising at board meetings.

- A.2.3 The chairman should be responsible for ensuring that directors receive, in a timely manner, adequate information, which must be accurate, clear, complete and reliable.
- A.2.4 One of the important roles of the chairman is to provide leadership for the board. The chairman should ensure that the board works effectively and performs its responsibilities, and that all key and appropriate issues are discussed by it in a timely manner. The chairman should be primarily responsible for drawing up and approving the agenda for each board meeting. He should take into account, where appropriate, any matters proposed by the other directors for inclusion in the agenda. The chairman may delegate this responsibility to a designated director or the company secretary.
- A.2.5 The chairman should take primary responsibility for ensuring that good corporate governance practices and procedures are established.
- A.2.6 The chairman should encourage all directors to make a full and active contribution to the board's affairs and take the lead to ensure that it acts in the best interests of the issuer. The chairman should encourage directors with different views to voice their concerns, allow sufficient time for discussion of issues and ensure that board decisions fairly reflect board consensus.
- A.2.7 The chairman should at least annually hold meetings with the independent non-executive directors without the presence of other directors.
- A.2.8 The chairman should ensure that appropriate steps are taken to provide effective communication with shareholders and that their views are communicated to the board as a whole.
- A.2.9 The chairman should promote a culture of openness and debate by facilitating the effective contribution of non-executive directors in particular and ensuring constructive relations between executive and non-executive directors.

A.3 Board composition

Principle

The board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer's business. It should ensure that changes to its composition can be managed without undue disruption. It should include a balanced composition of executive and non-executive directors (including independent non-executive directors) so that there is a strong independent element on the board, which can effectively exercise independent judgement. Non-executive directors should be of sufficient calibre and number for their views to carry weight.

Code Provisions

- A.3.1 The independent non-executive directors should be identified in all corporate communications that disclose the names of directors.
- A.3.2 An issuer should maintain on its website and on the GEM website an updated list of its directors identifying their role and function and whether they are independent non-executive directors.

Recommended Best Practice

A.3.3 The board should state its reasons if it determines that a proposed director is independent notwithstanding that the individual holds cross-directorships or has significant links with other directors through involvements in other companies or bodies.

Note: A cross-directorship exists when two (or more) directors sit on each other's boards.

A.4 Appointments, re-election and removal

Principle

There should be a formal, considered and transparent procedure for the appointment of new directors. There should be plans in place for orderly succession for appointments. All directors should be subject to re-election at regular intervals. An issuer must explain the reasons for the resignation or removal of any director.

Code Provisions

A.4.1 Non-executive directors should be appointed for a specific term, subject to re-election.

A.4.2 All directors appointed to fill a casual vacancy should be subject to election by shareholders at the first general meeting after appointment. Every director, including those appointed for a specific term, should be subject to retirement by rotation at least once every three years.

A.4.3 Serving more than 9 years could be relevant to the determination of a non-executive director's independence. If an independent non-executive director serves more than 9 years, his further appointment should be subject to a separate resolution to be approved by shareholders. The papers to shareholders accompanying that resolution should include the reasons why the board believes he is still independent and should be re-elected.

A.5 Nomination Committee

Principle

In carrying out its responsibilities, the nomination committee should give adequate consideration to the Principles under A.3 and A.4.

Code Provisions

A.5.1 Issuers should establish a nomination committee which is chaired by the chairman of the board or an independent non-executive director and comprises a majority of independent non-executive directors.

A.5.2 The nomination committee should be established with specific written terms of reference which deal clearly with its authority and duties. It should perform the following duties:-

- (a) review the structure, size and composition (including the skills, knowledge and experience) of the board at least annually and make recommendations on any proposed changes to the board to complement the issuer's corporate strategy;
- (b) identify individuals suitably qualified to become board members and select or make recommendations to the board on the selection of, individuals nominated for directorships;

- (c) assess the independence of independent non-executive directors; and
- (d) make recommendations to the board on the appointment or re-appointment of directors and succession planning for directors, in particular the chairman and the chief executive.

A.5.3 The nomination committee should make available its terms of reference explaining its role and the authority delegated to it by the board by including them on the GEM website and issuer's website.

A.5.4 Issuers should provide the nomination committee sufficient resources to perform its duties. Where necessary, the nomination committee should seek independent professional advice, at the issuer's expense, to perform its responsibilities.

A.5.5 Where the board proposes a resolution to elect an individual as an independent non-executive director at the general meeting, it should set out in the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting:

1. the process used for identifying the individual and why the board believes the individual should be elected and the reasons why it considers the individual to be independent;
2. if the proposed independent non-executive director will be holding their seventh (or more) listed company directorship, why the board believes the individual would still be able to devote sufficient time to the board;
3. the perspectives, skills and experience that the individual can bring to the board; and
4. how the individual contributes to diversity of the board.

A.6 Responsibilities of directors

Principle

Every director must always know his responsibilities as a director of an issuer and its conduct, business activities and development. Given the essential unitary nature of the board, non-executive directors have the same duties of care and skill and fiduciary duties as executive directors.

Code Provisions

A.6.1 Every newly appointed director of an issuer should receive a comprehensive, formal and tailored induction on appointment. Subsequently he should receive any briefing and professional development necessary, to ensure that he has a proper understanding of the issuer's operations and business and is fully aware of his responsibilities under statute and common law, the GEM Listing Rules, legal and other regulatory requirements and the issuer's business and governance policies.

A.6.2 The functions of non-executive directors should include:

- (a) participating in board meetings to bring an independent judgement to bear on issues of strategy, policy, performance, accountability, resources, key appointments and standards of conduct;
- (b) taking the lead where potential conflicts of interests arise;

- (c) serving on the audit, remuneration, nomination and other governance committees, if invited; and
 - (d) scrutinising the issuer's performance in achieving agreed corporate goals and objectives, and monitoring performance reporting.
- A.6.3 Every director should ensure that he can give sufficient time and attention to the issuer's affairs and should not accept the appointment if he cannot do so.
- A.6.4 The board should establish written guidelines no less exacting than the Model Code for relevant employees in respect of their dealings in the issuer's securities. "Relevant employee" includes any employee or a director or employee of a subsidiary or holding company who, because of his office or employment, is likely to possess inside information in relation to the issuer or its securities.
- A.6.5 All directors should participate in continuous professional development to develop and refresh their knowledge and skills. This is to ensure that their contribution to the board remains informed and relevant. 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.
- Note: Directors should provide a record of the training they received to the issuer.*
- A.6.6 Each director should disclose to the issuer at the time of his appointment, and in a timely manner for any change, the number and nature of offices held in public companies or organisations and other significant commitments. The identity of the public companies or organisations and an indication of the time involved should also be disclosed. The board should determine for itself how frequently this disclosure should be made.
- A.6.7 Independent non-executive directors and other non-executive directors, as equal board members, should give the board and any committees on which they serve the benefit of their skills, expertise and varied backgrounds and qualifications through regular attendance and active participation. Generally they should also attend general meetings to gain and develop a balanced understanding of the views of shareholders.
- A.6.8 Independent non-executive directors and other non-executive directors should make a positive contribution to the development of the issuer's strategy and policies through independent, constructive and informed comments.

A.7 Supply of and access to information

Principle

Directors should be provided in a timely manner with appropriate information in the form and quality to enable them to make an informed decision and perform their duties and responsibilities.

Code Provisions

- A.7.1 For regular board meetings, and as far as practicable in all other cases, an agenda and accompanying board papers should be sent, in full, to all directors. These should be sent in a timely manner and at least 3 days before the intended date of a board or board committee meeting (or other agreed period).

A.7.2 Management has an obligation to supply the board and its committees with adequate information, in a timely manner, to enable it to make informed decisions. The information supplied must be complete and reliable. To fulfil his duties properly, a director may not, in all circumstances, be able to rely purely on information provided voluntarily by management and he may need to make further enquiries. Where any director requires more information than is volunteered by management, he should make further enquiries where necessary. So, the board and individual directors should have separate and independent access to the issuer's senior management.

Note: In this Code, "senior management" refers to the same persons referred to in the issuer's annual report and required to be disclosed under rule 18.39.

A.7.3 All directors are entitled to have access to board papers and related materials. These papers and related materials should be in a form and quality sufficient to enable the board to make informed decisions on matters placed before it. Queries raised by directors should receive a prompt and full response, if possible.

B. REMUNERATION OF DIRECTORS AND SENIOR MANAGEMENT AND BOARD EVALUATION

B.1 The level and make-up of remuneration and disclosure

Principle

An issuer should disclose its directors' remuneration policy and other remuneration related matters. The procedure for setting policy on executive directors' remuneration and all directors' remuneration packages should be formal and transparent. Remuneration levels should be sufficient to attract and retain directors to run the company successfully without paying more than necessary. No director should be involved in deciding his own remuneration.

Code Provisions

B.1.1 The remuneration committee should consult the chairman and/or chief executive about their remuneration proposals for other executive directors. The remuneration committee should have access to independent professional advice if necessary.

B.1.2 The remuneration committee's terms of reference should include, as a minimum:–

- (a) to make recommendations to the board on the issuer's policy and structure for all directors' and senior management remuneration and on the establishment of a formal and transparent procedure for developing remuneration policy;
- (b) to review and approve the management's remuneration proposals with reference to the board's corporate goals and objectives;

- (c) either:
 - (i) to determine, with delegated responsibility, the remuneration packages of individual executive directors and senior management; or
 - (ii) to make recommendations to the board on the remuneration packages of individual executive directors and senior management.

This should include benefits in kind, pension rights and compensation payments, including any compensation payable for loss or termination of their office or appointment;

- (d) to make recommendations to the board on the remuneration of non-executive directors;
- (e) to consider salaries paid by comparable companies, time commitment and responsibilities and employment conditions elsewhere in the group;
- (f) to review and approve compensation payable to executive directors and senior management for any loss or termination of office or appointment to ensure that it is consistent with contractual terms and is otherwise fair and not excessive;
- (g) to review and approve compensation arrangements relating to dismissal or removal of directors for misconduct to ensure that they are consistent with contractual terms and are otherwise reasonable and appropriate; and
- (h) to ensure that no director or any of his associates is involved in deciding his own remuneration.

B.1.3 The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board by including them on the GEM website and the issuer's website.

B.1.4 The remuneration committee should be provided with sufficient resources to perform its duties.

B.1.5 Issuers should disclose details of any remuneration payable to members of senior management by band in their annual reports.

Recommended Best Practices

B.1.6 If B.1.2(c)(ii) is adopted, where the board resolves to approve any remuneration or compensation arrangements with which the remuneration committee disagrees, the board should disclose the reasons for its resolution in its next Corporate Governance Report.

B.1.7 A significant proportion of executive directors' remuneration should link rewards to corporate and individual performance.

B.1.8 Issuers should disclose details of any remuneration payable to members of senior management, on an individual and named basis, in their annual reports.

B.1.9 The board should conduct a regular evaluation of its performance.

C. ACCOUNTABILITY AND AUDIT

C.1 Financial reporting

Principle

The board should present a balanced, clear and comprehensible assessment of the company's performance, position and prospects.

Code Provisions

- C.1.1 Management should provide sufficient explanation and information to the board to enable it to make an informed assessment of financial and other information put before it for approval.
- C.1.2 Management should provide all members of the board with monthly updates giving a balanced and understandable assessment of the issuer's performance, position and prospects in sufficient detail to enable the board as a whole and each director to discharge their duties under rule 5.01 and Chapter 17.

Note: 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.

- C.1.3 The directors should acknowledge in the Corporate Governance Report their responsibility for preparing the accounts. There should be a statement by the auditors about their reporting responsibilities in the auditors' report on the financial statements. Unless it is inappropriate to assume that the company will continue in business, the directors should prepare the accounts on a going concern basis, with supporting assumptions or qualifications as necessary. Where the directors are aware of material uncertainties relating to events or conditions that may cast significant doubt on the issuer's ability to continue as a going concern, they should be clearly and prominently disclosed and discussed at length in the Corporate Governance Report. The Corporate Governance Report should contain sufficient information for investors to understand the severity and significance of matters. To a reasonable and appropriate extent, the issuer may refer to other parts of the annual report. These references should be clear and unambiguous and the Corporate Governance Report should not contain only a cross-reference without any discussion of the matter.

- C.1.4 The directors should include in the separate statement containing a discussion and analysis of the group's performance in the annual report, an explanation of the basis on which the issuer generates or preserves value over the longer term (the business model) and the strategy for delivering the issuer's objectives.

Note: An issuer should have a corporate strategy and a long term business model. Long term financial performance as opposed to short term rewards should be a corporate governance objective. An issuer's board should not take undue risks to make short term gains at the expense of long term objectives.

- C.1.5 The board should present a balanced, clear and understandable assessment in annual and interim reports, and other financial disclosures required by the GEM Listing Rules. It should also do so for reports to regulators and information disclosed under statutory requirements.

C.2 Risk management and internal control

Principle

The board is responsible for evaluating and determining the nature and extent of the risks it is willing to take in achieving the issuer's strategic objectives, and ensuring that the issuer establishes and maintains appropriate and effective risk management and internal control systems. The board should oversee management in the design, implementation and monitoring of the risk management and internal control systems, and management should provide a confirmation to the board on the effectiveness of these systems.

Code Provisions

- C.2.1 The board should oversee the issuer's risk management and internal control systems on an ongoing basis, ensure that a review of the effectiveness of the issuer's and its subsidiaries' risk management and internal control systems has been conducted at least annually and report to shareholders that it has done so in its Corporate Governance Report. The review should cover all material controls, including financial, operational and compliance controls.
- C.2.2 The board's annual review should, in particular, ensure the adequacy of resources, staff qualifications and experience, training programmes and budget of the issuer's accounting, internal audit and financial reporting functions.
- C.2.3 The board's annual review should, in particular, consider:
- (a) the changes, since the last annual review, in the nature and extent of significant risks, and the issuer's ability to respond to changes in its business and the external environment;
 - (b) the scope and quality of management's ongoing monitoring of risks and of the internal control systems, and where applicable, the work of its internal audit function and other assurance providers;
 - (c) the extent and frequency of communication of monitoring results to the board (or board committee(s)) which enables it to assess control of the issuer and the effectiveness of risk management;

- (d) significant control failings or weaknesses that have been identified during the period. Also, the extent to which they have resulted in unforeseen outcomes or contingencies that have had, could have had, or may in the future have, a material impact on the issuer's financial performance or condition; and
- (e) the effectiveness of the issuer's processes for financial reporting and GEM Listing Rule compliance.

C.2.4 Issuers should disclose, in the Corporate Governance Report, a narrative statement on how they have complied with the risk management and internal control code provisions during the reporting period. In particular, they should disclose:

- (a) the process used to identify, evaluate and manage significant risks;
- (b) the main features of the risk management and internal control systems;
- (c) an acknowledgement by the board that it is responsible for the risk management and internal control systems and reviewing their effectiveness. It should also explain that such systems are designed to manage rather than eliminate the risk of failure to achieve business objectives, and can only provide reasonable and not absolute assurance against material misstatement or loss;
- (d) the process used to review the effectiveness of the risk management and internal control systems and to resolve material internal control defects; and
- (e) the procedures and internal controls for the handling and dissemination of inside information.

C.2.5 The issuer should have an internal audit function. Issuers without an internal audit function should review the need for one on an annual basis and should disclose the reasons for the absence of such a function in the Corporate Governance Report.

Notes:

- 1 *An internal audit function generally carries out the analysis and independent appraisal of the adequacy and effectiveness of the issuer's risk management and internal control systems.*
- 2 *A group with multiple listed issuers may share group resources to carry out the internal audit function for members of the group.*

Recommended Best Practices

C.2.6 The board may disclose in the Corporate Governance Report that it has received a confirmation from management on the effectiveness of the issuer's risk management and internal control systems.

C.2.7 The board may disclose in the Corporate Governance Report details of any significant areas of concern.

C.3 Audit Committee

Principle

The board should establish formal and transparent arrangements to consider how it will apply financial reporting, risk management and internal control principles and maintain an appropriate relationship with the issuer's auditors. The audit committee established under the GEM Listing Rules should have clear terms of reference.

Code Provisions

C.3.1 Full minutes of audit committee meetings should be kept by a duly appointed secretary of the meeting (who should normally be the company secretary). Draft and final versions of minutes of the meetings should be sent to all committee members for their comment and records within a reasonable time after the meeting.

C.3.2 A former partner of the issuer's existing auditing firm should be prohibited from acting as a member of its audit committee for a period of two years from the date of the person ceasing:

- (a) to be a partner of the firm; or
- (b) to have any financial interest in the firm,

whichever is later.

C.3.3 The audit committee's terms of reference should include at least:-

Relationship with the issuer's auditors

- (a) to be primarily responsible for making recommendations to the board on the appointment, reappointment and removal of the external auditor, and to approve the remuneration and terms of engagement of the external auditor, and any questions of its resignation or dismissal;
- (b) to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process in accordance with applicable standards. The audit committee should discuss with the auditor the nature and scope of the audit and reporting obligations before the audit commences;
- (c) to develop and implement policy on engaging an external auditor to supply non-audit services. For this purpose, "external auditor" includes any entity that is under common control, ownership or management with the audit firm or any entity that a reasonable and informed third party knowing all relevant information would reasonably conclude to be part of the audit firm nationally or internationally. The audit committee should report to the board, identifying and making recommendations on any matters where action or improvement is needed;

Review of the issuer's financial information

- (d) to monitor integrity of the issuer's financial statements and the annual report and accounts, half-year report and quarterly reports, and to review significant financial reporting judgements contained in them. In reviewing these reports before submission to the board, the committee should focus particularly on:–
 - (i) any changes in accounting policies and practices;
 - (ii) major judgmental areas;
 - (iii) significant adjustments resulting from audit;
 - (iv) the going concern assumptions and any qualifications;
 - (v) compliance with accounting standards; and
 - (vi) compliance with the GEM Listing Rules and legal requirements in relation to financial reporting;
- (e) Regarding (d) above:–
 - (i) members of the committee should liaise with the board and senior management and the committee must meet, at least twice a year, with the issuer's auditors; and
 - (ii) the committee should consider any significant or unusual items that are, or may need to be, reflected in the report and accounts, it should give due consideration to any matters that have been raised by the issuer's staff responsible for the accounting and financial reporting function, compliance officer or auditors;

Oversight of the issuer's financial reporting system, risk management and internal control systems

- (f) to review the issuer's financial controls, and unless expressly addressed by a separate board risk committee, or by the board itself, to review the issuer's risk management and internal control systems;
- (g) to discuss the risk management and internal control systems with management to ensure that management has performed its duty to have effective systems. This discussion should include the adequacy of resources, staff qualifications and experience, training programmes and budget of the issuer's accounting and financial reporting function;
- (h) to consider major investigation findings on risk management and internal control matters as delegated by the board or on its own initiative and management's response to these findings;
- (i) where an internal audit function exists, to ensure co-ordination between the internal and external auditors, and to ensure that the internal audit function is adequately resourced and has appropriate standing within the issuer, and to review and monitor its effectiveness;

- (j) to review the group's financial and accounting policies and practices;
- (k) to review the external auditor's management letter, any material queries raised by the auditor to management about accounting records, financial accounts or systems of control and management's response;
- (l) to ensure that the board will provide a timely response to the issues raised in the external auditor's management letter;
- (m) to report to the board on the matters in this code provision; and
- (n) to consider other topics, as defined by the board.

Notes: These are only intended to be suggestions on how compliance with this code provision may be achieved and do not form part of it.

1 *The audit committee may wish to consider establishing the following procedure to review and monitor the independence of external auditors: -*

- (i) consider all relationships between the issuer and the audit firm (including non-audit services);*
- (ii) obtain from the audit firm annually, information about policies and processes for maintaining independence and monitoring compliance with relevant requirements, including those for rotation of audit partners and staff; and*
- (iii) meet with the auditor, at least annually, in the absence of management, to discuss matters relating to its audit fees, any issues arising from the audit and any other matters the auditor may wish to raise.*

2 *The audit committee may wish to consider agreeing with the board the issuer's policies on hiring employees or former employees of the external auditors and monitoring the application of these policies. The audit committee should then be in a position to consider whether there has been or appears to be any impairment of the auditor's judgement or independence for the audit.*

3 *The audit committee should ensure that an external auditor's provision of non-audit services does not impair its independence or objectivity. When assessing the external auditor's independence or objectivity in relation to non-audit services, the audit committee may wish to consider:*

- (i) whether the skills and experience of the audit firm make it a suitable supplier of non-audit services;*
- (ii) whether there are safeguards in place to ensure that there is no threat to the objectivity and independence of the audit because the external auditor provides non-audit services;*
- (iii) the nature of the non-audit services, the related fee levels and fee levels individually and in total relative to the audit firm; and*
- (iv) criteria for compensation of the individuals performing the audit.*

4 *For further guidance, issuers may refer to the “Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor’s Independence” issued by the Technical Committee of the International Organization of Securities Commissions in October 2002 and “A Guide for Effective Audit Committees” published by the Hong Kong Institute of Certified Public Accountants in February 2002. Issuers may also adopt the terms of reference in those guides, or any other comparable terms of reference for establishing an audit committee.*

C.3.4 The audit committee should make available its terms of reference, explaining its role and the authority delegated to it by the board by including them on the GEM website and the issuer’s website.

C.3.5 Where the board disagrees with the audit committee’s view on the selection, appointment, resignation or dismissal of the external auditors, the issuer should include in the Corporate Governance Report a statement from the audit committee explaining its recommendation and also the reason(s) why the board has taken a different view.

C.3.6 The audit committee should be provided with sufficient resources to perform its duties.

C.3.7 The terms of reference of the audit committee should also require it:

- (a) to review arrangements employees of the issuer can use, in confidence, to raise concerns about possible improprieties in financial reporting, internal control or other matters. The audit committee should ensure that proper arrangements are in place for fair and independent investigation of these matters and for appropriate follow-up action; and
- (b) to act as the key representative body for overseeing the issuer’s relations with the external auditor.

Recommended Best Practice

C.3.8 The audit committee should establish a whistleblowing policy and system for employees and those who deal with the issuer (e.g. customers and suppliers) to raise concerns, in confidence, with the audit committee about possible improprieties in any matter related to the issuer.

D. DELEGATION BY THE BOARD

D.1 Management functions

Principle

An issuer should have a formal schedule of matters specifically reserved for board approval. The board should give clear directions to management on the matters that must be approved by it before decisions are made on the issuer's behalf.

Code Provisions

D.1.1 When the board delegates aspects of its management and administration functions to management, it must, at the same time, give clear directions as to the management's powers, in particular, where management should report back and obtain prior board approval before making decisions or entering into any commitments on the issuer's behalf.

Note: The board should not delegate matters to a board committee, executive directors or management to an extent that would significantly hinder or reduce the ability of the board as a whole to perform its functions.

D.1.2 An issuer should formalise the functions reserved to the board and those delegated to management. It should review those arrangements periodically to ensure that they remain appropriate to the issuer's needs.

D.1.3 An issuer should disclose the respective responsibilities, accountabilities and contributions of the board and management.

D.1.4 Directors should clearly understand delegation arrangements in place. Issuers should have formal letters of appointment for directors setting out the key terms and conditions of their appointment.

D.2 Board Committees

Principle

Board committees should be formed with specific written terms of reference which deal clearly with their authority and duties.

Code Provisions

D.2.1 Where board committees are established to deal with matters, the board should give them sufficiently clear terms of reference to enable them to perform their functions properly.

D.2.2 The terms of reference of board committees should require them to report back to the board on their decisions or recommendations, unless there are legal or regulatory restrictions on their ability to do so (such as a restriction on disclosure due to regulatory requirements).

D.3 Corporate Governance Functions

Code Provisions

D.3.1 The terms of reference of the board (or a committee or committees performing this function) should include at least:

- (a) to develop and review an issuer's policies and practices on corporate governance and make recommendations to the board;
- (b) to review and monitor the training and continuous professional development of directors and senior management;
- (c) to review and monitor the issuer's policies and practices on compliance with legal and regulatory requirements;
- (d) to develop, review and monitor the code of conduct and compliance manual (if any) applicable to employees and directors; and
- (e) to review the issuer's compliance with the Code and disclosure in the Corporate Governance Report.

D.3.2 The board should be responsible for performing the corporate governance duties set out in the terms of reference in D.3.1. or it may delegate the responsibility to a committee or committees.

E. COMMUNICATION WITH SHAREHOLDERS

E.1 Effective communication

Principle

The board should be responsible for maintaining an on-going dialogue with shareholders and in particular, use annual general meetings or other general meetings to communicate with them and encourage their participation.

Code Provisions

E.1.1 For each substantially separate issue at a general meeting, a separate resolution should be proposed by the chairman of that meeting. Issuers should avoid "bundling" resolutions unless they are interdependent and linked forming one significant proposal. Where the resolutions are "bundled", issuers should explain the reasons and material implications in the notice of meeting.

Note: An example of a substantially separate issue is the nomination of persons as directors. Accordingly, each person should be nominated by means of a separate resolution.

- E.1.2 The chairman of the board should attend the annual general meeting. He should also invite the chairmen of the audit, remuneration, nomination and any other committees (as appropriate) to attend. In their absence, he should invite another member of the committee or failing this his duly appointed delegate, to attend. These persons should be available to answer questions at the annual general meeting. The chairman of the independent board committee (if any) should also be available to answer questions at any general meeting to approve a connected transaction or any other transaction that requires independent shareholders' approval. An issuer's management should ensure the external auditor attend the annual general meeting to answer questions about the conduct of the audit, the preparation and content of the auditors' report, the accounting policies and auditor independence.
- E.1.3 The issuer should arrange for the notice to shareholders to be sent for annual general meetings at least 20 clear business days before the meeting and to be sent at least 10 clear business days for all other general meetings.
- E.1.4 The board should establish a shareholders' communication policy and review it on a regular basis to ensure its effectiveness.
- E.1.5 The issuer should have a policy on payment of dividends and should disclose it in the annual report.

E.2 Voting by Poll

Principle

The issuer should ensure that shareholders are familiar with the detailed procedures for conducting a poll.

Code Provisions

- E.2.1 The chairman of a meeting should ensure that an explanation is provided of the detailed procedures for conducting a poll and answer any questions from shareholders on voting by poll.

F. COMPANY SECRETARY

Principle

The company secretary plays an important role in supporting the board by ensuring good information flow within the board and that board policy and procedures are followed. The company secretary is responsible for advising the board through the chairman and/or the chief executive on governance matters and should also facilitate induction and professional development of directors.

Code Provisions

- F.1.1 The company secretary should be an employee of the issuer and have day-to-day knowledge of the issuer's affairs. Where an issuer engages an external service provider as its company secretary, it should disclose the identity of a person with sufficient seniority (e.g. chief legal counsel or chief financial officer) at the issuer whom the external provider can contact.

- F.1.2 The board should approve the selection, appointment or dismissal of the company secretary.

Note: A board meeting should be held to discuss the appointment and dismissal of the company secretary and the matter should be dealt with by a physical board meeting rather than a written resolution.

- F.1.3 The company secretary should report to the board chairman and/or the chief executive.
- F.1.4 All directors should have access to the advice and services of the company secretary to ensure that board procedures, and all applicable law, rules and regulations, are followed.

CORPORATE GOVERNANCE REPORT

MANDATORY DISCLOSURE REQUIREMENTS

To provide transparency, the issuers must include the following information for the accounting period covered by the annual report and significant subsequent events for the period up to the date of publication of the annual report, to the extent possible:

G. CORPORATE GOVERNANCE PRACTICES

- (a) A narrative statement explaining how the issuer has applied the principles in the Code, enabling its shareholders to evaluate how the principles have been applied;
- (b) a statement as to whether the issuer meets the code provisions. If an issuer has adopted its own code that exceeds the code provisions, it may draw attention to this fact in its annual report; and
- (c) for any deviation from the code provisions, details of the deviation during the financial year (including considered reasons).

H. DIRECTORS' SECURITIES TRANSACTIONS

For the required standard of dealings set out in rules 5.48 to 5.67:

- (a) whether the issuer has adopted a code of conduct regarding directors' securities transactions on terms no less exacting than the required standard of dealings;
- (b) having made specific enquiry of all directors, whether the directors of the issuer have complied with, or whether there has been any non-compliance with, the required standard of dealings and its code of conduct regarding directors' securities transactions; and
- (c) for any non-compliance with the required standard of dealings, if any, details of these and an explanation of the remedial steps taken by the issuer to address them.

I. BOARD OF DIRECTORS

- (a) Composition of the board, by category of directors, including name of chairman, executive directors, non-executive directors and independent non-executive directors;
- (b) number of board meetings held during the financial year;
- (c) attendance of each director, by name, at the board and general meetings;

Notes: 1 Subject to the issuer's constitutional documents and the law and regulations of its place of incorporation, attendance by a director at a meeting by electronic means such as telephonic or video-conferencing may be counted as physical attendance.

2 If a director is appointed part way during a financial year, his attendance should be stated by reference to the number of board meetings held during his tenure.

- (d) 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. Attendance at board or committee meetings by an alternate director should not be counted as attendance by the director himself;
- (e) a statement of the respective responsibilities, accountabilities and contributions of the board and management. In particular, a statement of how the board operates, including a high level statement on the types of decisions taken by the board and those delegated to management;
- (f) details of non-compliance (if any) with rules 5.05(1) and (2), and 5.05A and an explanation of the remedial steps taken to address non-compliance. This should cover non-compliance with appointment of a sufficient number of independent non-executive directors and appointment of an independent non-executive director with appropriate professional qualifications, or accounting or related financial management expertise;
- (g) reasons why the issuer considers an independent non-executive director to be independent where he/she fails to meet one or more of the guidelines for assessing independence set out in rule 5.09;
- (h) relationship (including financial, business, family or other material/relevant relationship(s)), if any, between board members and in particular, between the chairman and the chief executive; and
- (i) how each director, by name, complied with A.6.5.

J. CHAIRMAN AND CHIEF EXECUTIVE

- (a) The identity of the chairman and chief executive; and
- (b) whether the roles of the chairman and chief executive are separate and exercised by different individuals.

K. NON-EXECUTIVE DIRECTORS

The term of appointment of non-executive directors.

L. BOARD COMMITTEES

The following information for each of the remuneration committee, nomination committee, audit committee, risk committee, and corporate governance functions:

- (a) the role and function of the committee;
- (b) the composition of the committee and whether it comprises independent non-executive directors, non-executive directors and executive directors (including their names and identifying the chairman of the committee);
- (c) the number of meetings held by the committee during the year to discuss matters and the record of attendance of members, by name, at meetings held during the year; and
- (d) a summary of the work during the year, including:
 - (i) for the remuneration committee, determining the policy for the remuneration of executive directors, assessing performance of executive directors and approving the terms of executive directors' service contracts, performed by the remuneration committee. Disclose which of the two models of remuneration committee described in B.1.2(c) was adopted;
 - (ii) for the nomination committee, disclosing the policy for the nomination of directors, performed by the nomination committee or the board of directors (if there is no nomination committee) during the year. This includes the nomination procedures and the process and criteria adopted by the nomination committee or the board of directors (if there is no nomination committee) to select and recommend candidates for directorship during the year. This section should also include the board's policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives;
 - (iii) for corporate governance, determining the policy for the corporate governance of the issuer, and duties performed by the board or the committee(s) under D.3.1; and
 - (iv) for the audit committee, a report on how it met its responsibilities in its review of the quarterly, half-yearly and annual results, and unless expressly addressed by a separate risk committee, or the board itself, its review of the risk management and internal control systems, the effectiveness of the issuer's internal audit function, and its other duties under the Code. Details of non-compliance with rule 5.28 (if any) and an explanation of the remedial steps taken by the issuer to address non-compliance with establishment of an audit committee; and
 - (v) for the risk committee (if any), a report on how it met its responsibilities in its review of the risk management and internal control systems and the effectiveness of the issuer's internal audit function.

M. AUDITOR'S REMUNERATION

An analysis of remuneration in respect of audit and non-audit services provided by the auditors (including any entity that is under common control, ownership or management with the audit firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as part of the audit firm nationally or internationally) to the issuer. The analysis must include, in respect of each significant non-audit service assignment, details of the nature of the services and the fees paid.

Note: The code provisions expect issuers to make certain specified disclosures in the Corporate Governance Report. Where issuers choose not to make the expected disclosure, they must give considered reasons for not doing so under paragraph G(c). For ease of reference, the specific disclosure expectations of the code provisions are:

- 1 *directors' acknowledgement of their responsibility for preparing the accounts and a statement by the auditors about their reporting responsibilities (C.1. 3 of the Code);*
- 2 *report on material uncertainties, if any, relating to events or conditions that may cast significant doubt upon the issuer's ability to continue as a going concern (C.1. 3 of the Code);*
- 3 *a statement that the board has conducted a review of the effectiveness of the internal control system of the issuer and its subsidiaries (C.2.1 of the Code); and*
- 4 *a statement from the audit committee explaining its recommendation and the reason(s) why the board has taken a different view from the audit committee on the selection, appointment, resignation or dismissal of external auditors (C.3.5 of the Code).*

N. COMPANY SECRETARY

- (a) Where an issuer engages an external service provider as its company secretary, its primary corporate contact person at the issuer (including his/her name and position); and
- (b) details of non-compliance with rule 5.15.

O. SHAREHOLDERS' RIGHTS

- (a) How shareholders can convene an extraordinary general meeting;
- (b) the procedures by which enquiries may be put to the board and sufficient contact details to enable these enquiries to be properly directed; and
- (c) the procedures and sufficient contact details for putting forward proposals at shareholders' meetings.

P. INVESTOR RELATIONS

Any significant changes in the issuer's constitutional documents during the year.

Q. RISK MANAGEMENT AND INTERNAL CONTROL

Where an issuer includes the board's statement that it has conducted a review of its risk management and internal control systems in the annual report under code provision C.2.1, it must disclose the following:

- (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; and
- (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.

RECOMMENDED DISCLOSURES

The disclosures set out in the following paragraphs on corporate governance matters are provided for issuers' reference. They are not intended to be exhaustive or mandatory. They are intended to show the areas which issuers may comment on in their Corporate Governance Report. The level of detail needed varies with the nature and complexity of issuers' business activities. Issuers are encouraged to include the following information in their Corporate Governance Report:

R. SHARE INTERESTS OF SENIOR MANAGEMENT

The number of shares held by senior management (i.e. those individuals whose biographical details are disclosed in the annual report).

S. INVESTOR RELATIONS

- (a) Details of shareholders by type and aggregate shareholding;
- (b) details of the last shareholders' meeting, including the time and venue, major items discussed and voting particulars;
- (c) indication of important shareholders' dates in the coming financial year; and
- (d) public float capitalisation at the year end.

T. MANAGEMENT FUNCTIONS

The division of responsibility between the board and management.

Note: Issuers may consider that some of the information recommended under paragraphs R to T is too lengthy and detailed to be included in the Corporate Governance Report. As an alternative to full disclosure in the Corporate Governance Report, issuers may choose to include some or all of this information:

- (a) *on its website and highlight to investors where they can:*

 - (i) *access the soft copy by giving a hyperlink direct to the relevant webpage; and/
or*
 - (ii) *collect a hard copy of the relevant information free of charge; or*

- (b) *where the information is publicly available, by stating where the information can be found. Any hyperlink should be direct to the relevant webpage.*