

CONSULTATION PAPER

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Proposed Revisions to the Code of Corporate Governance

Corporate Governance Council

Consultation Paper

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I) Preface

1 This consultation paper sets out proposed revisions to the Code of Corporate Governance, which is applicable to listed companies in Singapore on a 'comply or explain' basis.

2 The Corporate Governance Council invites interested parties to submit their views and comments on the proposals made in the paper, and the draft amendments to the revised Code. Electronic submission is encouraged. Please submit your comments by 31 July 2011 to:

The Secretariat, Corporate Governance Council
c/o Capital Markets Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117
Fax: 62291350
Email: consult_cgcode@mas.gov.sg

3 Please note that all submissions received may be made public.

II) Introduction

4 The Code of Corporate Governance (“**Code**”) was first introduced by the Corporate Governance Committee in March 2001 and came into effect on 1 January 2003. The Code is applicable to listed companies in Singapore on a ‘comply or explain’ basis. In 2002, the Council of Corporate Disclosure and Governance (“**CCDG**”) was set up to enhance the corporate governance framework and prescribe accounting standards in Singapore. CCDG undertook a review of the Code in 2005, and the revised Code was subsequently issued by the Ministry of Finance in July 2005.

5 Following the issuance of the revised Code, CCDG was dissolved in 2007. The task of overseeing corporate governance of listed companies was transferred to MAS and SGX.

6 Since the last review of the Code in 2005, global events such as the recent financial crisis have highlighted pertinent corporate governance issues and led to closer study of corporate governance issues around the world. In this context, the Corporate Governance Council (“**Council**”) was established in February 2010. The Council is chaired by Mr Alan Chan (Chief Executive Officer, Singapore Press Holdings), and comprises representatives from the business community and stakeholder groups. [Please see **Annex** for details of the composition of the Council.]

7 The Council’s objective is to continue the effort in promoting a high standard of corporate governance among listed companies in Singapore. This effort is critical to maintaining investor confidence, and to enhancing Singapore’s reputation as a leading and trusted international financial centre. Pursuant to this objective, over the last 18 months, the Council has carried out a comprehensive review of the Code, taking into account corporate governance developments in other leading jurisdictions and feedback received from stakeholders.

8 In reviewing the Code, the Council has garnered views from business representatives and industry organisations. The Council has also heard views expressed both by international organisations, and local and international commentators on corporate governance issues. The range of views and perspectives expressed reflect the wide interest in corporate governance issues, and the differing concerns of various stakeholders. The Council would like to express its gratitude to all who have offered their views.

9 In proposing changes to the Code, the Council recognises that corporate governance practices vary across jurisdictions and will necessarily reflect the unique and practical situations in each jurisdiction. Hence, the Council has sought to adapt, rather than replicate relevant practice of other jurisdictions. The Council is of the view that the objective of enhancing Singapore's corporate governance standards and reputation as a trusted financial hub is better achieved with a set of recommendations that has wide acceptance as being pragmatic and workable in practice.

10 The Council has proposed changes to 14 of the principles in the Code and their accompanying guidelines, and introduced two new principles. The Council has also included a statement on 'The Role of Shareholders' as an annexure to the Code. This takes into account the increasing acceptance that shareholders have an important role in creating an environment that fosters good corporate governance.

11 The rest of this paper sets out the key proposals, while detailed proposals are contained in the enclosed Revised Code. [The Council's proposed Revised Code is set out in **Appendix A**, while **Appendix A1** shows the Council's proposed revisions set out against the Principles and Guidelines of the current Code.]

III) Director Independence

12 Independent directors feature prominently in corporate governance codes worldwide. Independent directors are essential in providing guidance, supervision, as well as checks and balances for effective corporate governance, and in protecting the overall interests of the company. The issue of when a director is considered independent has hence generated much discussion and debate.

13 The current Code defines an independent director as one who has no relationship with the company, its related companies¹ or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement with a view to the best interests of the company. The definition does not capture relationships with substantial shareholders.

14 During the 2005 review of the Code, CCDG had recommended tightening the definition of independent director to exclude directors who are, or directly associated with, substantial shareholders. After much consideration, the Government concluded that substantial shareholders do not pose the kind of principal-agent problems that executive directors can potentially pose. Arguably, substantial shareholders have a greater stake in the success of the company and will, more often than not, have their interests aligned with those of all the shareholders in the company. A director's relationship with substantial shareholders was hence not captured under the existing Code in the definition of independence for directors.

15 Since then, this issue has remained a topic of debate. Views continued to be expressed that in some circumstances, relationships with substantial shareholders may influence an independent director's exercise of objective judgement. Having revisited this issue, and considering various perspectives as well as international developments, the Council is of the view that to enable independent directors to act effectively in companies, it is important that independent directors do not possess any relationship with stakeholders such as substantial shareholders or organisations providing material services to the companies. The Council's recommendation is reflected in the revised Principle 2 of the Code.

16 Another issue is whether a director's tenure on the board can affect his or her independent judgement. The Council debated this at length and agreed with the view that the independence of directors may be compromised after a long

¹ A related corporation in relation to a company includes its subsidiary, fellow subsidiary, or parent company.

period of service due to their friendship and collegiality with management. Taking into account practices in Singapore and other leading jurisdictions, the Council considers nine years as an appropriate tenure for the board to deliberate afresh the issue of independence of a director.

17 The Council is of the view that the board's Nominating Committee should continue to have the responsibility and prerogative to decide if a director remains independent beyond the nine years, taking into account the differing circumstances for each director. The Council considers this approach appropriate in offering guidance to listed companies while at the same time respecting the diverse needs of companies and their stakeholders.

Key Proposal 1: To include in the Code the following relationships as additional instances where a director will be deemed non-independent:

- if the director is or was, in the current or any of the past three financial years, a substantial shareholder, partner, executive officer, or director of organisations to which the company or any of its related corporations made, or received significant payments or material services in the current or immediate past financial year;
- if the director is a substantial shareholder or an immediate family member of a substantial shareholder of the company,
- if the director is or has been directly associated² with a substantial shareholder of the company in the current or any of the past three financial years; and
- if the director has served on the Board for more than nine years from the date of his or her first election.

Please refer to proposed amendments to Guideline 2.3.

² A director will be considered "directly associated" to a substantial shareholder when the director is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the substantial shareholder. A director will not be considered "directly associated" to a substantial shareholder by reason only of his or her appointment having been proposed by that substantial shareholder.

IV) Board Composition

18 It is an accepted principle that the decision making of the board should not be dominated by any individual or groups of individuals. A strong and independent element on the board is important to enable the board to exercise objective judgement.

19 Internationally, the proportion of independent directors on the board of a listed company ranges from one-third in Hong Kong to half or majority in Australia, United Kingdom and United States. The current Code requires independent directors to make up at least one-third of the board of a listed company. In reviewing this issue, the Council has sought to balance the need for a strong independent element on boards and the practicality of requiring half or a majority of the board to be independent in all cases. The Council is of the view that such a requirement will be needed only in specific circumstances, and has hence recommended four situations under which an enhancement to the present requirement is warranted.

Key Proposal 2: To introduce in the Code a new provision that independent directors should make up at least half of the Board where (i) the Chairman and the Chief Executive Officer (“CEO”) is the same person; (ii) the Chairman and CEO are immediate family members³; (iii) the Chairman and CEO are both part of the management team; or (iv) the Chairman is not independent.

Please refer to the proposed amendments to Guideline 2.2.

V) Director Training

20 The global financial crisis has heightened expectations of the role and responsibilities of directors of listed companies. There have been calls to ensure that directors have the necessary competencies to cope with increasingly complex operations of companies, and the ability to discharge their fiduciary duties.

21 The Council considers the quality of directors a critical element in good corporate governance. Companies should play a more proactive role in providing continuous training for directors. Accordingly, the Council proposes to include

³ The term "immediate family" shall have the same meaning as currently defined in the Listing Manual of the Singapore Exchange (the "Listing Manual"), as the person's spouse, child, adopted child, step-child, brother, sister and parent.

several provisions on improving the competencies of directors. However, the diversity of listed companies renders the prescription of minimum hours of training for directors impractical. Instead, the Council proposes that companies be asked to disclose its training programme for directors in their annual reports, and for the Nominating Committee to make recommendations on training programmes for the board.

Key Proposal 3: To introduce in the Code new requirements for companies to arrange and fund training for new and existing directors, and disclose the induction, orientation and training provided to new and existing directors in its annual report.

Please refer to the proposed amendments to Guideline 1.6.

Key Proposal 4: To introduce in the Code a new requirement for the Nominating Committee to review and make recommendations to the Board on training programmes for the Board.

Please refer to the proposed amendments to Guideline 4.2.

VI) Multiple Directorships

22 Directors are expected to allocate sufficient time and effort to their board duties, so as to oversee their companies effectively. There has been increased focus on the ability of directors holding multiple directorships to carry out their duties effectively. The United Kingdom has specifically addressed this by specifying the maximum number of directorships a director is allowed to hold.

23 The Council has deliberated upon this issue at length. The consensus of the Council is that the demands of each directorship vary, depending on, among other things, the size and nature of the companies the director serves on, and his roles on these boards. The different situation facing each director makes any attempt to dictate a maximum number arbitrary. The Council recommends that the Nominating Committee deliberate on this matter and satisfy themselves that each director is able to carry out his duties, taking into consideration the director's other board representations and principal commitments⁴. Each board should also set and

⁴ The term "principal commitments" shall include all commitments which involve significant time commitment such as full-time occupation, consultancy work, committee work, non-listed company board representations and

disclose the maximum number of listed company board representations its directors can hold.

Key Proposal 5: To introduce in the Code a provision that the Nominating Committee should decide if a director is able to and has been adequately carrying out his or her duties as a director, taking into consideration the director's number of listed company board representations and other principal commitments. The Board should further determine the maximum number of listed company board representations which any director may hold, and disclose this in the company's annual report.

Please refer to the proposed amendments to Guideline 4.4.

VII) Alternate Directors

24 Directors appoint alternate directors at times to represent them at meetings if they are unable to attend, or on specific project basis to provide the technical expertise required.

25 While not a prevalent practice, the appointment of alternate directors has nevertheless drawn queries on the necessity and appropriateness of this practice. It has been noted, for instance, that an alternate director may not be adequately prepared or familiar with the corporate affairs of the company. Although Singapore law recognises alternate directors, the Council is of the view that as a matter of best practice, directors should generally avoid appointing alternates, except for limited periods in exceptional circumstances, such as a medical emergency.

Key Proposal 6: To introduce in the Code a provision that directors should not appoint alternate directors except for limited periods in exceptional circumstances.

Please refer to the proposed amendments to Guideline 4.5.

directorships and involvement in non-profit organisations. Where a director sits on the boards of non-active subsidiaries, those appointments should not normally be considered principal commitments.

VIII) Remuneration Practices and Disclosures

26 Irresponsible remuneration practices have been cited as one of the key factors contributing to the global financial crisis. It is a widely held view that the lack of focus on the linkage between remuneration and risk policies contributed to excessive risk-taking by employees, resulting in financial distress as the risks materialised. The lack of transparency of remuneration related information has also been cited as a contributory factor, and leading jurisdictions have moved to require companies to fully disclose the remuneration of directors.

27 In view of these international developments, the Council has considered it necessary to enhance the guidance on remuneration practices and strengthen disclosure in this area. The Council considers it important for companies to align the level and structure of remuneration to their long-term interests and risk policies, so as not to cause employees to adopt short-term strategies and take on excessive risks for their companies. The Council is also of the view that the Code should provide additional guidance for companies to allow them, where justified, to reclaim incentive components of remuneration from directors and key management personnel. New provisions should also be made on the independence of remuneration consultants, and on disclosing the performance measures upon which remuneration is based.

28 The current Code requires companies to disclose, within bands of S\$250,000, the remuneration of each director and of at least the top five key executives. The Council has deliberated whether the Code should be enhanced to require full and precise disclosure of remuneration for directors and key executives. The Council carefully considered concerns expressed by industry players on the possibility of ‘wage inflation’ and the negative impact on competition for talent if there is full disclosure of remuneration, particularly given the tight labour market in Singapore.

29 The Council is mindful of the need to strike a balance between the need of companies to remain competitive and the desire for fuller disclosure. It proposes that companies provide full disclosure of the remuneration of each director and the CEO on a named basis. The current requirement of disclosure in bands of S\$250,000 will remain for the other top five key management personnel. Companies will also be required to disclose aggregate figures of the total remuneration of the top five key management personnel, which would provide a useful indication of the size of remuneration paid to these top executives as a group.

Key Proposal 7: To include in the Code that the level and structure of remuneration should be aligned with the long-term interests and risk policies of the company. Additional guidance will also be given to companies to consider provisions allowing the company to reclaim incentive components of remuneration from directors and key management personnel in exceptional circumstances of misstatement of financial results, or of misconduct resulting in financial loss to the company.

Please refer to the proposed amendments to Principle 8 and accompanying Guidelines.

Key Proposal 8: To introduce in the Code a provision that the Remuneration Committee should ensure that existing key relationships between the company and its appointed remuneration consultants will not affect the independence and objectivity of the remuneration consultants.

Please refer to the proposed amendments to Guideline 7.3.

Key Proposal 9: To include in the Code additional guidance that companies should disclose more information on the link between remuneration and performance of directors, CEOs and key management personnel⁵.

Please refer to the proposed amendments to Guideline 9.6.

Key Proposal 10: To introduce in the Code a provision that companies should fully disclose the remuneration of each individual director and the CEO on a named basis. Companies should disclose in aggregate the total remuneration paid to the top five key management personnel (who are not directors or the CEO).

Please refer to the proposed amendments to Guideline 9.2.

⁵ The term "key management personnel" shall mean persons having authority and responsibility for planning, directing and controlling the activities of the company, directly or indirectly.

IX) Risk Management

30 Global events over the past two years have underscored the importance of companies taking an integrated, firm-wide perspective of their risk exposure, and increased the focus on governance of risk management.

31 Several jurisdictions have revised their corporate governance practices to provide that the board is responsible for risk governance of the company. In this regard, the current Code provides that the Audit Committee is responsible for risk governance of the company, along with other matters such as the company's internal controls and audit function.

32 Having reviewed this issue and considering the fundamental nature and scope of risk governance of a company, the Council proposes introducing a new principle on risk management. The Council recommends further guidance on the board's role in assessing appropriate means for risk governance, including for instance establishing a separate board risk committee. To enhance management's accountability for the company's risk management, the Council also proposes that the board comment on whether it received assurance from the CEO or the Chief Financial Officer ("CFO") regarding the company's risk management system.

Key Proposal 11: To introduce in the Code provisions that (i) the Board is responsible for the risk governance of the company and should determine the nature and extent of risks which the company may undertake, and that it should ensure that management maintains a sound system of risk management and internal controls; and (ii) the Board should assess appropriate means to carry out its responsibility of overseeing the company's risk management framework and policies.

Please refer to the proposed amendments to Principle 11 and Guidelines 11.1, 11.2 and 11.4.

Key Proposal 12: To introduce in the Code a provision that the Board should comment on whether it has received assurance from the CEO and CFO that (i) the financial records have been properly maintained and the financial statements give a true and fair view of the company's operations and finances; and (ii) an effective risk management and internal controls system has been put in place.

Please refer to the proposed amendments to Guideline 11.3.

X) Shareholder Rights and Role

33 There is growing recognition that a company's corporate governance framework should involve shareholders and other stakeholders. International corporate governance practices have evolved to provide for shareholder rights to be recognised and facilitated, and for company boards to engage with their shareholders.

34 In Singapore, the legal rights of shareholders are set out in legislation or embodied in common law principles. The current Code complements the legal position by providing guidance on good practices pertaining to communication with shareholders and the conduct of shareholder meetings. With the aim of enhancing practices to give effect to shareholder rights, the Council proposes further guidance under a new principle of 'Shareholder Rights' and amendments to existing principles. The Council's intention is not to prescribe new rights nor interpret provisions in existing legislation. Rather, the proposed guidance is meant to spur companies towards good corporate governance practices in their engagement with shareholders.

35 The Council also considers it useful to have a statement on the role of shareholders in fostering good corporate governance. As there are different groups of shareholders, each with differing investment objectives, this statement is intended to serve only as a guide for companies in their engagement with their shareholders. The statement is accordingly presented as an annexure to the Code, and does not form part of the Code proper.

36. The current Code also contains provisions on the conduct of general meetings of shareholders and procedures for putting resolutions to a vote. The Council considered international developments and proposes to introduce in the Code a provision that companies should put all resolutions to vote by poll. There should also be an announcement of the detailed results of polls, showing the number of votes cast for and against each resolution and the respective percentages.

Key Proposal 13: To introduce in the Code a new principle, and accompanying guidelines, on 'Shareholder Rights' to guide companies in their engagement with shareholders.

Please refer to the proposed amendments to Principle 14 and the accompanying guidelines.

Key Proposal 14: To introduce as an annexure to the Code a statement on the role of shareholders in engaging with the companies in which they invest.

Please refer to the proposed Annexure to the Code.

Key Proposal 15: To introduce in the Code a provision that companies should put all resolutions to vote by poll and make an announcement of the detailed results showing the number of votes cast for and against each resolution and the respective percentages.

Please refer to the proposed amendment to Guideline 16.5.

Annex

COMPOSITION OF THE CORPORATE GOVERNANCE COUNCIL

Mr Alan Chan (Chairman)	Chief Executive Officer, Singapore Press Holdings Limited
Mr Gautam Banerjee	Executive Chairman, PricewaterhouseCoopers LLP
Ms Chua Sock Koong	Group Chief Executive Officer, Singapore Telecommunications Limited
Mr David Conner	Chief Executive Officer, Overseas-Chinese Banking Corporation Limited
Mr Patrick Daniel	Editor-in-chief, Singapore Press Holdings Limited
Mr Daniel Ee	Chairman, CitySpring Infrastructure Management Pte Ltd
Mr David Gerald	President and Chief Executive Officer, Securities Investors Association (Singapore)
Mr John Lim	Executive Deputy Chairman, LMA International N.V. / Chairman, Singapore Institute of Directors
Ms Olivia Lum	Group President and Chief Executive Officer, Hyflux Ltd
Mr Dilhan Pillay Sandrasegara	Head, Portfolio Management and Co-Head, Singapore, Temasek Holdings Private Limited
Mr Tan Chong Huat	Managing Partner, RHT Law LLP
Mr Peter Taylor	Head of Corporate Governance, Aberdeen Asset Management Asia Limited
Mr Kenny Yap	Executive Chairman & Managing Director, Qian Hu Corporation Limited

**EX-OFFICIO MEMBERS OF
THE CORPORATE GOVERNANCE COUNCIL**

Mr Leo Mun Wai	Assistant Managing Director, Capital Markets, Monetary Authority of Singapore
Ms Juthika Ramanathan	Chief Executive, Accounting and Corporate Regulatory Authority Singapore
Ms Yeo Lian Sim	Chief Regulatory Officer, Singapore Exchange Limited

**RESOURCE PERSONS ASSISTING
THE CORPORATE GOVERNANCE COUNCIL**

Ms Ginney Lim (Resource person to Mr Alan Chan)	General Counsel, EVP, Corporate Communications & Group Company Secretary, Singapore Press Holdings Limited
Mr Ng Siew Quan (Resource person to Mr Gautam Banerjee)	Partner, PricewaterhouseCoopers LLP
Ms Jeann Low (Resource person to Ms Chua Sock Koong)	Group Chief Financial Officer, Singapore Telecommunications Limited
Mr Peter Yeoh (Resource person to Mr David Conner)	Head, Group Secretariat, Overseas-Chinese Banking Corporation Limited
Associate Professor Jeremy Goh (Resource person to Mr David Gerald)	Co-Chairman of Corporate Governance Committee, Securities Investors Association (Singapore)
Mr. Sovann Giang (Resource person to Mr John Lim)	Executive Director, Singapore Institute of Directors
Ms Yang Ai Chian (Resource person to Ms Olivia Lum)	Senior Vice President Legal (Business), Hyflux Ltd
Ms Rachel Eng (Resource person to Mr Dilhan Pillay Sandrasegara)	Managing Partner, WongPartnership LLP
Ms Lai Chin Yee (Resource person to Mr Kenny Yap)	Finance Director, Qian Hu Corporation Limited

**EXTERNAL PARTIES ASSISTING
THE CORPORATE GOVERNANCE COUNCIL**

Associate Professor Lan Luh Luh (Co-Director of Corporate Governance and Financial Reporting Centre, NUS Business School)	External party appointed to Sub-Committee dealing with Board Matters
Mr Yeo Meng Hin	External party appointed to Sub-Committee dealing with Remuneration Matters
Mr Kevin Ong (Head of Executive Compensation, South East Asia, Towers Watson)	External party appointed to Sub-Committee dealing with Remuneration Matters
Mr Teng Cheong Kwee	External party appointed to Sub-Committee dealing with Accountability and Audit
Ms Kala Anandarajah (Partner, Rajah & Tann LLP)	External party appointed to Sub-Committee dealing with Shareholder Rights and Responsibilities