

***INDUSTRY FEEDBACK AND CBB COMMENTS AND RECOMMENDATIONS ON THE
CONSULTATION PAPER FOR HC COG MODULE –JUNE 2011***

General Comments on HC COG

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Has reviewed the proposed regulations and has compared the requirements with the ones in Rulebook Vol.1. As most requirements are common and the Bank is complying with them, the bank does not have significant observations on the consultation document. However, as requested the bank provides below brief answers and comments on the consultation questions:</p> <p>Q1. Are the requirements clearly stated/ workable? Yes.</p> <p>Q2. Do respondents agree with the approach taken and the specific proposals? Yes, however the bank provides below some comments on the proposed.</p> <p>Q3. If not, how should these requirements be modified? The Bank also follows provisions of the HC Module of Vol. 1. As a result the bank has compared the requirements of Vol. 1 and the proposed HC Module of Vol. 6 and feels that although the majority of requirements are similar in both Modules, the additional requirements covered under Vol. 6 should also be reflected (or highlighted separately) in Vol. 1; to avoid confusion in implementation and their compliance.</p> <p>The two differences in requirements between HC Module Vol. 1 and 6 are:</p> <ul style="list-style-type: none"> a) Under HC-3.3.2 the requirements that at least 1 member must have relevant capital market and risk management experience is not mentioned in Vol.1. b) Under HC-6.2.1 Board appointment of compliance officer is not a requirement under Vol. 1. <p>The requirements/ stipulations under Rulebook 1 should be considered adequate.</p>	<p>A new sub-chapter in the Scope section has been included to clearly indicate the harmonization across the HC Modules with exceptions, as per regulated activity.</p> <p>Attention is drawn to the fact that Chapter 7 is the main difference between Module HC in Volume 6 and the other HC Modules. Clarification has also been included that CBB licensees subject to more than one Module HC must comply with the higher standard and must report to and are subject to supervision by the supervisor of their specific regulated activities (including those CBB licensees listed on a licensed exchange).</p> <p>Compliance with a particular Module HC is not necessarily compliance with another Module HC.</p>	<p>Inserted 3 new paragraphs from HC-A.1.8 onwards detailing the interaction between the various HC Modules.</p>

General Comments on HC COG (Continued)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Q4. Is the guidance provided adequate: Yes. The templates for performance evaluation should be provided by CBB in order to facilitate the adoption of the appropriate process by the Bank.</p> <p>Q5. Is the implementation timetable proposed clear and workable? Yes.</p> <p>Q6. Are there any other issues, not covered above that you wish to comment on? N/A.</p>	<p>The CBB is in the process of creating the performance evaluation template.</p>	<p>No change.</p>
<p>A1. The requirements are clearly stated and workable to some extent.</p> <p>A2. We agree with the approach taken, however, we have some comments in respective areas.</p> <p>A3. We propose some modifications as addressed in our answer to the consultation question No. 6.</p> <p>A4. We agree that the guidance provided is adequate.</p> <p>A5. We agree that the implementation timetable is clear and workable.</p> <p>A6. Please find below our comments regarding some issues.</p>	<p>Addressed below.</p>	<p>No change.</p>
<p>Has reviewed the new regulation and has no comments on the same.</p>	<p>Noted</p>	<p>No change.</p>
<p>Fully supports the objectives of this regulation which aims to introduce a consistent, effective and harmonized approach in the regulation and supervision of corporate governance in line with the principles laid out in the COG Code.</p> <p>As a licensed retail conventional bank, notes that the requirement of this Module are addressed by the Bank through the HC Module in Vol.1. For the purpose of clarity and to remove ambiguity suggest that the Module clarifies that entities licensed under Vol. 1 are exempt from the requirements of this Module to the extent that they are similar to the requirements of Vol. 1.</p>	<p>See first general comment.</p>	<p>Addressed above.</p>

General Comments on HC COG (Continued)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Q1. Are the requirements clearly stated/ workable? Yes. Q2. Do respondents agree with the approach taken and the specific proposals? Yes. Q3. If not, how should these requirements be modified? N/A. Q4. Is the guidance provided adequate: Yes. Q5. Is the implementation timetable proposed clear and workable? Yes. Q6. Are there any other issues, not covered above that you wish to comment on? It is recommended that the Module should clarify that entities licensed under Vol. 1 of the Rulebook are exempt from the requirements of this Module to the extent that they are similar to the requirements of the HC Module in Volume 1.</p>	<p>There is no exemption from the Module, as each supervisor within the CBB must be satisfied with the compliance of the licensee/listed company.</p>	<p>Addressed above.</p>
<p>Notes that this framework is an expansion of the requirements found in the COG Code issued by the CBB & MOIC. Also acknowledges this aim of the project is to develop further the existing protection afforded to investors and the level of market integrity in the capital market in Bahrain, so that it will reinforce Bahrain as a best practice destination for corporate governance and capital market activities. Our review is based on our international legal experience of not only other international corporate governance codes, but also in consideration of our specific Bahrain market experience. Q1. Are the requirements clearly stated/ workable? Have found the code very clearly stated and drafted on a level that is comparable to corporate governance codes in other international jurisdictions. Our thoughts on workability of the requirements – see our response to Q6 below. Q2. Do respondents agree with the approach taken and the specific proposals? See response to Q6 below. Q3. If not, how should these requirements be modified? See response to Q6 below. Q4. Is the guidance provided adequate: Yes, it is very thorough.</p>		

General Comments on HC COG (Continued)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Q5. Is the implementation timetable proposed clear and workable? Yes.</p> <p>Q6. Are there any other issues, not covered above that you wish to comment on?</p> <p>The only overarching comment we would have given the Bahrain market is how in practice different category CBB license holders falling within the definition of CMSP would in practice be able to meet all the requirements of the Code.</p> <p>Note the adoption of the “comply or explain” concept (which follows the principles laid down for listed companies) on the same level as many of the international corporate governance codes. Believe that this model works well in circumstances where there are few exceptions from full compliance with the Code (as should be the case with listed entities). However, anticipate that there may be circumstances where it will work less well when there are more numerous derogations required from the Code (e.g. smaller companies).</p> <p>With the latter in mind, wonder if there should be different treatment by the Code of different categories of institution within the CMSP definition. Besides the existing differentiation between (i) listed entities; (ii) normal CBB entities; and (iii) branches of overseas institutions, there is arguably a considerable difference between a retail bank and a small category 2 or 3 investment firm. It would be reasonable to apply high and exacting standards to all banks, but those institutions that may have fewer shareholders and not conduct business with ordinary retail customers may find it onerous to meet the same standards.</p>	<p>These differences between CBB licensees have been acknowledged through the ‘light touch’ regulation in Chapter 11 of the Module and the CBB will monitor the applicability of this Module and the lighter requirements of Chapter 11 on an ongoing basis.</p>	<p>No change.</p>
<p>Believes that the framework is extremely helpful to introduce a consistent, effective and harmonized approach in the regulation and supervision of corporate governance in line with the principles laid out in the COG Code.</p>	<p>Noted.</p>	<p>No change.</p>

General Comments on HC COG (Continued)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>HC Module of Volume 6 was examined against the consultation questions contained in the Executive Summary annexed to the consultation paper and comfort is derived that the Module will meet the objectives and will be helpful in providing a clear and comprehensive framework to enable capital market service providers to have effective corporate governance policies and procedures in place.</p>	<p>Noted.</p>	<p>No change.</p>
<p>We have noted some confusion as to the relevance of Volume 6 to some companies. For example one listed bank we met didn't believe that Volume 6 was relevant for them in the context of Corporate Governance, as they are already covered by the other CBB Rulebooks for banking licensees.</p> <p>We believe this confusion is twofold:</p> <ol style="list-style-type: none"> 1. The distinction of CBBs role as a regulator of the Capital Markets versus its role as the regulator of banking and financial services providers is not entirely clear to some companies. In many other countries the capital regulator and banking/financial service regulators are completely separate entities. Having both under CBB makes sense, but there is potentially a need to highlight these different roles to companies – e.g. CMSD as the regulator of the capital markets, and other Supervisory Directorates of CBB as the regulators and licensors of banks and other financial services providers. 2. The definition of companies subject to Volume 6 i.e. CMSPs is a bit opaque and includes a very diverse range of companies, with very different roles within the capital markets. We suggest that a clear distinction is made between the 'participants' in the markets (e.g. listed companies), the institutions that facilitate the markets (e.g. the stock exchange), and those companies that support and service the market (e.g. advisers, SROs). These might for example be categorised as: 	<p>Addressed above.</p>	<p>No change.</p>

General Comments on HC COG (Continued)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p><i>For the purposes of determining a “financial expert,” the following guidance has been provided in the form of attributes (in addition to education, experience, and other issues) of such a person: (a) an understanding of generally accepted accounting principles (“GAAP”) and financial statements; (b) experience applying GAAP in connection with the accounting for estimates, accruals, and reserves; (c) experience preparing or auditing financial statements that present accounting issues generally comparable to those raised by the company; experience with internal controls and procedures for financial reporting; and an understanding of audit committee functions. The board of directors of the company must evaluate the totality of an individual’s education and experience. The fact that a person previously served on an audit committee does not, by itself, justify the appointment of that person as a financial expert under the proposed definition. It is the overall mix of attributes, education and experience that must be looked to by the Board of Directors.</i></p> <p><u>Shari’a Audit:</u> There is no mention that Islamic organisations are required to undertake an annual Shari’a Audit. This should be in compliance with AAOIFI / IIFA guidelines, and is likely to warrant the support of external specialist auditors. The business auditors would be able to ensure compliance with already approved and documented processes and policies, but could not be expected to have the expertise to address Shari’a issues.</p>	<p>This can be addressed in the ongoing obligations of Islamic licensees.</p>	<p>No change.</p>

HC COG-A.1.10 – Introduction – Purpose – The Comply or Explain Principle

Industry Comments	CMS Comments	CMS Recommendations/Action
Comply or Explain – this is only a guideline here. Other Volumes have it as a Rule, and it is central to the principle of the Code. Suggest that it is a Rule.	Agreed.	Make this a Rule.

HC COG-A.1.12 – Introduction – Purpose – Monitoring and Enforcement of Module HC

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Whilst HC-A.1.12 makes reference to board composition, this isn't mentioned again in the CMSP part of the module (The SRO Section HC-10.1.9 touches on it). We feel that there is merit in restating the importance of board composition as a specific section under Principle 1, emphasising the need for a mix of NEDs, independent directors and executives. The UK Code states “The board should include an appropriate combination of executive and non-executive directors (and, in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board’s decision taking.” However, there is merit in CBB considering a more detailed explanation of why it is appropriate to have a worthwhile representation of executives (not just CEO and/or CFO) and the importance of the role played by independent directors, given the low level of representation of both of these categories on many boards.</p> <p>For example with respect to executive representation the Walker Review, in the UK, highlighted the “argument in support of the UK model includes, in particular, concern that a board in which the CEO and possibly the Chief Finance Officer (CFO) are the only executive members puts the CEO in an unduly strong position in controlling information flow to and from the board, materially increasing vulnerability to overdependence on one individual on major strategy and risk issues. This vulnerability will be amplified still further in a situation in which the style and entrenchment of the CEO blocks the possibility of constructive challenge from within the executive team.”</p>	RPC discussion.	

HC COG-A.1.16 – Introduction – Effective Date

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Although the guidance provided on the requirements is adequate and the specific proposals are workable, the timelines for implementation specified in HC-A.1.16 need to be revised since expecting full compliance by financial year end 2011 would be difficult given that the implementation of this Module would probably only be towards the end of the year 2011. CBB to consider a workable timeline for implementation from the date of issuance of the circular to enable the licensee to put in place the requirements and be in compliance with the Rulebook.</p>	<p>The CBB is currently assessing the level of compliance of all CMSPs and will determine if any change is required to the implementation at the completion of this project.</p>	<p>No change.</p>

HC COG-B.1 – Capital Market Service Providers (CMSPs)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>HC-B.1 & HC-B.3.1 – Capital Market Service Providers – as commented above under our key comments, suggest different approach and more clarity in definition and distinction.</p>	<p>Addressed above.</p>	<p>No change.</p>
<p>As per the definition of CMSPs in the Module HC, this refers to entities which carry out activities specified in Article 80 of the CBB Law (companies trading in securities). However, the organization does not fall under Article 80 of the CBB Law. The Scope of Application of Module HC (HC-B.3.1) Definition refers to an SRO in addition to a Capital Market Service Provider. Therefore, please clarify if the requirements and obligations contained in this Module are only directed to ‘Capital Market Service Provider’, since HC-B.3.1 contradicts HC-B.1.1.</p>	<p>There is no conflict between the provisions. It does fall under Article 80 of the CBB Law and is specifically included in the definition of the CMSP in HC-B.1.1.</p>	<p>No change.</p>

HC COG-B.1 – Capital Market Service Providers (CMSPs) Continued

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Attention is drawn to B.1 and B.1.1. wherein it states that the contents of this Module – unless otherwise stated – apply to all CMSPs incorporated under the Bahrain CCL, except those members of an SRO licensed as a dealer, proprietary clearing member, or a discount broker, as well as those companies operating as a Bahraini single person company.</p> <p>This clause does not make any mention to application of the regulations for a CMSP who is already regulated by the CBB under other Volumes of the Rulebook and who already apply the HC Modules requirements as outlined in the other Rulebooks which are applicable to that licensee.</p> <p>CBB may consider making the regulations clearer about the approach CBB would adopt in relation to entities who are already operating in the securities market and who have been duly licensed by the CBB to carry out such activity and are governed in the regulations covered in other CBB Rulebooks. Clarity on the same may be warranted.</p>	<p>See first general comment.</p>	<p>Addressed above.</p>

HC COG-B.2.1 – Scope of Application - Branches and Subsidiaries

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>With regard to the applicability of the Module to CMSP’s branches and subsidiaries, please clarify further the supervisory role of the CBB and its mandate to impose rigorous controls on all CMSPs branches and subsidiaries outside Bahrain’s jurisdiction.</p>	<p>The controls placed on branches are to ensure the governance of these branches do not negatively affect the head office and are enforced through the license/listing of the head office and not in the foreign jurisdiction.</p>	<p>No change.</p>
<p>Do these provisions apply to a parent/holding company? If look at the definition of ‘subsidiary’ in Volume 1, this suggests that they would apply to parent/holding companies. We suggest that in addition to any clarification in this clause, that the definitions section (HC-B.3) should include definitions for: Subsidiary; Parent Company; Holding Company; Group Company/Member.</p>	<p>Agree.</p>	<p>Include these definitions where relevant/available.</p>

HC COG-B.2.1 – Scope of Application - Branches and Subsidiaries (Continued)

Industry Comments	CMS Comments	CMS Recommendations/Action
HC-B.2.2 - This clause makes reference to “financial services conducted in subsidiaries and other group members” – is this correct that it is restricted to financial services?	No, this has been deleted.	Delete reference to financial services.

HC COG-B.3 – Definitions

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Attention is drawn to HC-B.3.1 on definition of “Capital Market Service Provider” (hereinafter referred to as CMSP) means any person licensed, or authorized or involved in providing any activity specified under Article 80 of the CBB Law and includes SROs, their members and companies listed on licensed exchanges.</p> <p>The definition makes reference to Article 80 of the CBB Law, but does not spell out the details in the definition. To make the regulations more readable, the CBB may consider making the definition clearer by incorporating the details specified in Article 80 of the CBB Law within the definition.</p>	This definition is consistent across all Modules of Volume 6 and the CBB Law is available with the Rulebook on the CBB website.	No change.
<p>Definition of an Executive Director – under this definition all sorts of directors with no day to day management involvement with the company become classified as executive. We sent a list of various other definitions and comments previously, and these have been restated in the Appendix, along with a further narrative from the ACCA.</p> <p>Definition of an Independent Director – We suggest that there needs to be greater emphasis upon “The board’s determination should be a good faith finding”. The Formal Requirements listed fall short even of the Code and Rulebooks own narrative – for example HC-4.4.2 states that serving more than six years “is relevant to the determination of a non-executive director’s independence.”</p>		

HC COG-B.3 – Definitions (Continued)

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>HC-B.3.8 - Definition of Independent Director – there needs to be greater emphasis upon “The board’s determination should be a good faith finding”. The Formal Requirements listed fall short even of the Code and Rulebooks own narrative – for example HC-4.4.2 states that serving more than six years “is relevant to the determination of a non-executive director’s independence.” – Suggest that the definition and narrative be revisited to better articulate the role, and thus, profile of the independent directors.</p> <p>HC-B.3.13 - This defined Senior Manager/Management - Throughout the Rulebook, compared to other CBB Volumes, references to Senior Management/Management have been replaced with “officers”. There should be consistency i.e. all references updated, and/or a definition of “officer” added.</p>	<p>See above.</p> <p>RPC discussion. This should be amended to executive/senior position in line with resolution on controlled functions.</p>	

HC COG-1.2 – Role and Responsibilities

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>HC-1.2 & 1.3 - This is in comparison to the Volumes already in force – a lot of the paragraphs have been moved around, when there doesn’t appear to be any reason. For simplicity for firms, it would make sense to have as much consistency in the order/referencing of paragraphs.</p> <p>There is no reference to the board having responsibility for risk recognition and assessment – including for example a suggestion to have a nominated Chief Risk Officer.</p> <p>Refers to HC-1.2.3 c) – this should be HC-1.2.4 c).</p>	<p>Risk management is addressed in HC-1.2.2 (i).</p> <p>Agreed.</p>	<p>No change.</p> <p>In HC-1.2.7 – amend reference to HC-1.2.4 (c).</p>

HC COG-1.3.6 – Decision-Making Process

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>We would suggest that the restriction on how many directorships should be extended to apply to directorships held worldwide, not just in Bahrain. The purpose of this clause is to ensure that the director has sufficient time available to discharge their responsibilities, therefore the location of the other responsibilities shouldn't be limited. Other Regional and International commitments will impact on their time more than those restricted to Bahrain.</p> <p>HC COG-1.3 in general: Given the need for directors to have and commit greater time to undertaking their roles and discharging their responsibilities, why not make the limits on directorships, the regularity of formal board meetings and the individual directors contribution to board proceedings (as covered in 1.3.5, 1.3.6 and 1.3.9) rules. Without this it is possible that some companies will not adopt the cultural changes and increase the professionalism of directors</p>	<p>This can be determined by the board itself and will be evident through the directors annual assessment.</p> <p>As many of these provisions will be new, the licensees and listed companies should initially be guided to compliance.</p>	<p>No change.</p> <p>No change.</p>

HC COG-1.3.9 – Decision-Making Process

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>(States that Banks are encouraged to amend their Articles of Association to provide for telephonic and video-conference meetings. Participation on board meetings by means of video or telephone conferencing is regarded as attendance and may be recorded as such). Does this apply to Banks only?</p>	<p>No, this is meant to refer to CMSPs.</p>	<p>Replaced banks with CMSPs.</p>
<p>This is a guideline. For listed companies why not make it a rule to have a full board meeting every quarter, and for directors who do not contribute to step down.</p> <p>We think there is a typo here – it makes reference as follows: “Banks are encouraged to amend their articles ...”. Assume this should say “companies” or “CMSPs”.</p>	<p>Something that is specific to listed companies is incorporated in the listing rules.</p> <p>Agreed, amended.</p>	<p>No change.</p> <p>Amended.</p>

HC COG-1.4 – Independence of Judgment

Industry Comments	CMS Comments	CMS Recommendations/Action
HC-1.4.5 - This states that CEO shouldn't be Chairman but doesn't say that Deputy Chairman can't be CEO. This leaves the potential that the balance of power could still reside in one individual, especially in the absence of the chairman, or in the case of a figurehead/honorary chairman.	This would include any Deputy Chairman.	No change.
HC-1.4.6 - Disclosure re board independence – Given that a board review, and review of each directors independence is required annually, why not make this paragraph a rule.	See above point on guidance.	No change.

HC COG-1.6.1 – Directors' Access to Independent Advice

Industry Comments	CMS Comments	CMS Recommendations/Action
Could you explain who is referred to by stating the term Individual Director? As it might raise a conflict with other areas.	Each director (member of the Board of Directors) must have access to independent legal/professional advice at the CMSPs expense.	No change.

HC COG-1.7.1 – Directors' Communication with Management

Industry Comments	CMS Comments	CMS Recommendations/Action
States "management members are not entitled by right to attend board". Suggest the wording is changed to reflect that this is those management that are not executive directors, who would be members of the board.	Agreed.	Include 'other than those that are executive directors'.

HC COG-1.8.6 – Committees of the Board

Industry Comments	CMS Comments	CMS Recommendations/Action
A Corporate Governance Committee is possibly more important during the early years of embedding an appropriate culture of good corporate governance. Perhaps this clause should be made a 'rule' but with the concession that the Corporate Governance Committee may be merged into another (the Nomination Committee?). This way there is an explicit committee with the responsibility corporate governance – this will aid the supervision liaison for CBB, as there would be clearly identified members that are accountable/responsible.	Agreed.	Make it a rule and change 'shall' to 'must'.

HC COG-1.9.4 – Evaluation of the Board and Each Committee

Industry Comments	CMS Comments	CMS Recommendations/Action
Given that companies must perform an annual evaluation of the board and report on this in the annual report (HC-8.3.9) why not make this clause a Rule.	HC-8.3.9 is sufficient.	No change.

HC COG-2.3.2 – Avoidance of Conflicts of Interest

Industry Comments	CMS Comments	CMS Recommendations/Action
Makes reference to a Code of Conduct (see HC2.2.4) – which is a correct reference in Volume 1 – however Volume 6 doesn't include these details at all.	Reference needs to be deleted.	Delete reference to code of conduct.

HC COG-2.4.1 – Disclosure of Conflicts of Interest

Industry Comments	CMS Comments	CMS Recommendations/Action
This doesn't make explicit reference to disclosing 'potential' conflicts.	The board will determine whether there is a conflict.	No change.

HC COG-3.2.1 – Audit Committee

Industry Comments	CMS Comments	CMS Recommendations/Action
HC-3.2.1 (g) – This task is the responsibility of the Executive Committee	No, this must be done by the Audit Committee (prepare and recommend an annual budget).	No change.

HC COG-3.3.3 – Audit Committee Charter

Industry Comments	CMS Comments	CMS Recommendations/Action
States that: “The board should adopt a “whistleblower” programme under which employees can confidentially raise concerns about possible improprieties in financial or legal matters. Under the programme, concerns may be communicated directly to any audit committee member or alternatively, to an identified officer or employee who will report directly to the Audit Committee on this point”. Would this message be effective locally in Bahrain not to mention the possibility of misuse or over-use? What incentive or criteria and procedure is out there to control the programme?	This should be effective and is necessary.	No change.

HC COG-4.2.1 – Nominating Committee

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>We feel that the Nominating Committee’s responsibilities are mixing up their role in respect to the board and management, and missing their role in the evaluation and performance review of the board and individual directors. We suggest that responsibilities for management appointments are separated out from the responsibilities with regard to the board responsibilities and we also suggest that it should include the following, as rules:</p> <ul style="list-style-type: none"> • Must review annually the size and composition of the board and its committees. • Must identify and make recommendations of candidates for independent non-executive directors, in support of the target board composition. • Must identify and make recommendations of candidates for executive board directors, in support of the target board composition. • Must review annually the performance of the board and its committees. • Must review annually the performance and contribution of individual directors. <p>This clause/section also creates the opportunity to mention the use of external support on evaluation and performance review, as well as for the identification of independent directors can assist the robustness, objectivity and usefulness of these processes.</p>	<p>These issues are dealt with in Appendix B.</p>	<p>No change.</p>

HC COG-4.4.2 – Board Nominations to Shareholders

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Please clarify further the last sentence pertaining to this clause: “Serving more than six years is relevant to the determination of a non-executive director’s independence”.</p>	<p>If a director has been on the board for more than 6 years, he may be seen to have too close a relationship with the management or stakeholders of the company to be regarded as independent.</p>	<p>No change.</p>

HC COG-5.2.1 – Remuneration Committee

Industry Comments	CMS Comments	CMS Recommendations/Action
(c) States that board members remuneration is based on “their attendance and performance”. This needs clarification as to its meaning as HC-5.5.1 explicitly states that directors remuneration “must not include performance-related elements”.	It is clear that it is ‘their’ performance and not the performance of the company that will determine the remuneration.	No change.

HC COG-5.3.3 – Remuneration Committee Charter

Industry Comments	CMS Comments	CMS Recommendations/Action
Isn’t this making reference to performance related remuneration – which non-executives are excluded from. The performance related remuneration is covered under 5.6.6.	This is specific to the charter.	No change.

HC COG-6.3.4 – Titles, Authorities, Duties and Reporting Responsibilities

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Please clarify further the first sentence in the clause as it remains very vague: “The corporate secretary should be given general responsibility for reviewing the CMSP’s procedures and advising the Board directly on such matters”.</p> <p>Furthermore, please clarify the role of the Audit Committee in preparation and approval of the Budget and which type/kind of Budget we should refer to, the Audit budget or group overall budget.</p>	<p>These relate to operating procedures of the board.</p> <p>All budgets should be prepared by the Audit Committee.</p>	No change.

HC COG-9.2 – Governance and Disclosure per Shari’a Principles

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Shari’a Compliance – There is no mention that Islamic organisations are required to undertake an annual Shari’a Audit. This should be in compliance with AAOIFI / IIFA guidelines, and is likely to warrant the support of external specialist auditors. The business auditors would be able to ensure compliance with already approved and documented processes and policies, but could not be expected to have the expertise to address Shari’a issues.</p> <p><u>HC-9.2.4 (b)</u> - States “.....Committee on Shari’a-related governance issues (if any), and.....” - We can’t see why “if any” is appropriate. Shari’a compliance should be part of governance for an Islamic organisation. Suggest that “if any” is removed.</p> <p><u>HC-9 General</u> - There is no reference to the Shari’a Supervisory Board having a charter or terms of reference. This guidance may be helpful to ensure a formal approach. Given that Shari’a is a governance issue, perhaps there should also be guidance/rules on annual disclosures – for example Shari’a Audit and Scholars’ Fatwas.</p>	<p>See earlier comment.</p> <p>Agreed.</p> <p>See earlier comment on Islamic licensees.</p>	<p>Delete ‘if any’.</p>

HC COG-10 – Limited Capital Market Service Providers

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>There is no reference to the board composition including executive and independent directors.</p> <p>There is no reference to undertaking an annual evaluation of the board or directors. Assuming that some of these firms are very small it may be appropriate/useful for their board evaluation to be extended to consider the mix of skills and experience amongst the senior management too, as the wider ‘leadership’ team.</p>	<p>RPC discussion.</p>	

HC COG-10.1.16 – Limited Capital Market Service Providers – The Board

Industry Comments	CMS Comments	CMS Recommendations/Action
Makes reference to gaining access to management via an Audit Committee – nowhere else in HC-10 is Audit Committee mentioned.	Not required to be mentioned elsewhere.	No change.

HC COG-10.9 – Islamic Investment Firm Licensees

Industry Comments	CMS Comments	CMS Recommendations/Action
<p>Shari’a Compliance – There is no mention that Islamic organisations are required to undertake an annual Shari’a Audit. This should be in compliance with AAOIFI / IIFA guidelines, and is likely to warrant the support of external specialist auditors. The business auditors would be able to ensure compliance with already approved and documented processes and policies, but could not be expected to have the expertise to address Shari’a issues.</p> <p>Please also see comments above re HC-9, which apply here too.</p>	See earlier comment on Islamic licensees.	

HC COG-Appendix B

Industry Comments	CMS Comments	CMS Recommendations/Action
Under ‘Duties’ a) add the word ‘composition’ – so it reads: The committee shall make recommendations to the board from time-to-time to the size <i>and composition</i> of the board	Agreed.	Include recommended wording.