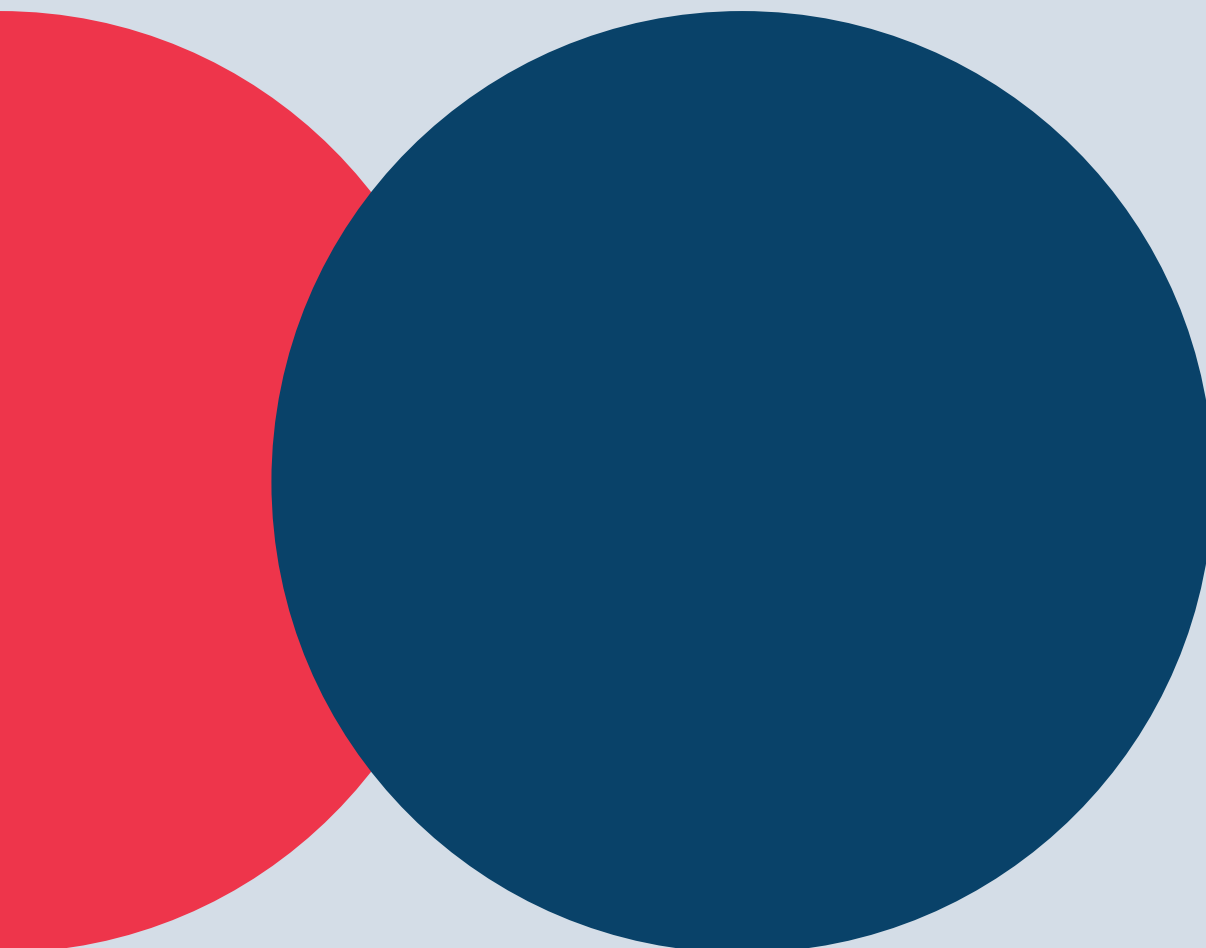


November 2017



## CONSULTATION PAPER

# REVIEW OF THE CORPORATE GOVERNANCE CODE AND RELATED LISTING RULES



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## CONTENTS

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	Page No.
<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>PROPOSALS AND CONSULTATION QUESTIONS.....</b>	<b>6</b>
PART I: INDEPENDENT NON-EXECUTIVE DIRECTORS .....	6
1. Overboarding and INED’s time commitment.....	6
2. Board diversity .....	8
3. Factors affecting INED’s independence.....	10
A. Cooling off periods for former professional advisers.....	12
B. Cooling off period in respect of material interests in business activities .....	13
C. Cross-directorships or Significant Links with other Directors .....	14
D. Family ties .....	15
PART II: NOMINATION POLICY .....	16
PART III: DIRECTORS’ ATTENDANCE AT MEETINGS .....	17
1. Directors’ attendance at general meetings .....	17
2. Chairman’s annual meetings with INEDs.....	18
PART IV: DIVIDEND POLICY .....	19
PART V: ELECTRONIC DISSEMINATION OF CORPORATE COMMUNICATIONS – IMPLIED CONSENT .....	20
 <b>APPENDICES</b>	
APPENDIX I: DRAFT AMENDMENTS TO THE RULES AND THE CORPORATE GOVERNANCE CODE AND CORPORATE GOVERNANCE REPORT	
APPENDIX II: PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY STATEMENT	



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## EXECUTIVE SUMMARY

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1. This consultation paper seeks views and comments on proposed changes to the Corporate Governance Code and Corporate Governance Report (the “**Code**”), as well as related amendments to the Rules Governing the Listing of Securities (the “**Rules**”).
2. The Exchange monitors corporate governance developments and reviews the Code and related Rules on an ongoing basis to ensure that they reflect currently acceptable standards and are adequate for maintaining investors’ confidence in the market.
3. The Exchange takes a balanced approach to regulating corporate governance. Recognising that issuers vary in size and complexity of operations and each faces unique risks and challenges, our corporate governance framework consists of a combination of mandatory Rules, Code Provisions (“**CPs**”) that are subject to “comply or explain” and Recommended Best Practices (“**RBPs**”) that are voluntary.
4. The Code and related Rules have undergone a number of important changes following consultation exercises conducted in recent years. In particular:
  - (a) substantive changes have been made following a comprehensive review conducted in 2010/2011 (“**2010/2011 Review**”), which resulted in the number of CPs (subject to “comply or explain”) increasing from 45 to 74 and the introduction of new Rules in 2012;<sup>1</sup>
  - (b) introduced a CP on board diversity and a requirement to disclose diversity policy including measurable objectives set for implementing the policy in 2013;<sup>2</sup> and
  - (c) substantive changes have been made to the risk management and internal control section of the Code in 2016.<sup>3</sup>
5. We also introduced the Environmental, Social and Governance Reporting Guide (“**ESG Guide**”) in 2012. After a further consultation in 2015, we upgraded the General Disclosures under each Aspect of the ESG Guide and the Key Performance Indicators in the “Environmental” Subject Area of the ESG Guide from recommended disclosures (i.e. voluntary) to “comply or explain” provisions in 2016<sup>4</sup> and 2017<sup>5</sup>, respectively.

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<sup>1</sup> Rule and Code changes came into effect in 2012. See the *Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules* and related consultation conclusions, available at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010124.pdf> and <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010124cc.pdf>, respectively.

<sup>2</sup> The amendments came into effect on 1 September 2013. See the *Consultation Paper on Board Diversity* and related consultation conclusions, available at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201209.pdf> and <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201209cc.pdf>, respectively.

<sup>3</sup> The amendments came into effect for accounting periods beginning on or after 1 January 2016. See the *Consultation Paper on Risk Management and Internal Control: Review of the Corporate Governance Code and Corporate Governance Report* and related consultation conclusions, available at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201406.pdf> and <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201406cc.pdf>, respectively.

<sup>4</sup> The amendments came into effect for accounting periods beginning on or after 1 January 2016. See the *Consultation Paper on Review of the Environmental, Social and Governance Reporting Guide Questionnaire*

6. Whilst the level of compliance with the Code and related Rules is consistently high<sup>6</sup>, we recognise the need to ensure that corporate governance is not treated as a “box-ticking” exercise. Furthermore, we note from recent investigations and disciplinary actions that a number of company directors have failed in their duties and not taken a proactive role in fulfilling their responsibilities as directors, either due to a lack of understanding of the Listing Rules or because they did not give their compliance obligations the focus they require. In this connection, we published a press release<sup>7</sup> at the end of last year setting out our expectations on directors and launched a quarterly directors’ training programme by webcasts this year.<sup>8</sup>
7. We have also published the first biannual *Enforcement Newsletter*<sup>9</sup> in July 2017 which provides a summary of the news and updates of the work undertaken by the Exchange and highlights specific areas and conduct that may impact on compliance with the Listing Rules.
8. This paper aims to address certain corporate governance concerns and to raise the overall standards of corporate governance amongst issuers and directors, having taken into account relevant international practice in a number of jurisdictions (including the UK, Australia, Singapore, Mainland China and the US) as well as recent market developments in this area. In particular, the proposals are intended to:
  - (a) enhance transparency and accountability of the nomination and election process of directors including independent non-executive directors (“INEDs”);
  - (b) improve transparency of INEDs’ relationship with issuers;
  - (c) strengthen the independence criteria in assessing potential INED candidates;
  - (d) promote board diversity; and
  - (e) require greater transparency of dividend policy.
9. In addition, we will provide guidance in due course encouraging INEDs to be appointed at least two months prior to listing. Currently, INEDs have to be identified at the submission of the listing application.<sup>10</sup> However, we note that some INEDs were appointed to new listing applicants late in the listing process which means they may not have had sufficient time to gain a proper understanding of the applicant’s

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on Review of the Environmental, Social and Governance Reporting Guide and related consultation conclusions, available at <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201507.pdf> and <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201507cc.PDF>, respectively.

<sup>5</sup> The amendments came into effect for accounting periods beginning on or after 1 January 2017. See the *Consultation Paper on Review of the Environmental, Social and Governance Reporting Guide Questionnaire on Review of the Environmental, Social and Governance Reporting Guide* and related consultation conclusions, available at <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201507.pdf> and <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201507cc.PDF>, respectively.

<sup>6</sup> See Analysis of Corporate Governance Reports, available at [http://www.hkexnews.hk/reports/corpgovpract/rpt\\_cgpd.htm](http://www.hkexnews.hk/reports/corpgovpract/rpt_cgpd.htm).

<sup>7</sup> <http://www.hkex.com.hk/eng/newsconsul/hkexnews/2016/161209news.htm>.

<sup>8</sup> The first of the webcasts, entitled “Duties of Directors and Role and Functions of Board Committees” was released on 31 March 2017, the second is entitled “Risk Management and Internal Control, ESG Reporting” which was released on 30 June 2017 and the third is entitled “Corporate Governance – Director and Company Secretary’s Roles?” which is released on 3 October 2017. The webcasts are accessible at: [http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/director\\_training\\_2017.htm](http://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/director_training_2017.htm)

<sup>9</sup> Accessible at: <http://www.hkex.com.hk/eng/rulesreg/listdisenf/enfnews/newsindex.htm>

<sup>10</sup> Disclosure requirements of “Directors, Supervisors and Parties Involved in the Global Offering” section of the Guidance Letter GL56-13.

affairs, and their responsibilities as directors of a listed company before the company is listed.

## **Independent Non-executive Directors**

### Overboarding and INED's time commitment

10. To address concerns that individuals with numerous directorships may be unable to devote sufficient time to each listed issuer, we propose to recommend greater transparency and accountability of the nomination process. We also propose to provide guidance setting out some considerations in assessing whether an INED nominee may be overboarded.
11. Currently the CP<sup>11</sup> (subject to “comply or explain”) requires the board to state in the circular to shareholders accompanying the resolution to elect the INED its reasons for electing him and why it considers the person to be independent. We propose to amend the CP so that if the proposed independent directorship will be holding his seventh (or more) listed company directorship, the circular to shareholders should, in addition, give reasons for determining that the proposed INED would be able to devote sufficient time to the board.<sup>12</sup>

### Board diversity

12. To encourage issuers to consider and explain their considerations in relation to diversity, we propose to upgrade a CP<sup>13</sup> to a Rule<sup>14</sup> requiring issuers to have a diversity policy and to disclose the policy or a summary of the policy in the issuers' corporate governance reports. We will also introduce guidance on diversity policy.
13. We further propose to amend the CP<sup>15</sup> to add, (see paragraph 11 for current requirements), that the board should state in the circular to shareholders accompanying the resolution to appoint an INED its diversity consideration, including:
  - (a) the process used for identifying the nominee;
  - (b) the perspectives, skills and experience that the person can bring to the board; and
  - (c) how the nominee would contribute to diversity of the board.

### Factors affecting INED's independence

14. To strengthen the criteria for the assessment of potential INEDs<sup>16</sup> independence and to align with international practice, we propose to extend the cooling off periods for (i) former professional advisers, from the current one-year cooling off period to a three-year period; and (ii) persons with material interests in the issuer's principal business activities, from the current no cooling off period to a one-year period.

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<sup>11</sup> CP A.5.5 – see paragraph 28.

<sup>12</sup> We have referred to the Institutional Shareholder Services, Inc.'s 2016 Benchmark Policy Recommendations for Hong Kong which recommends that it would generally vote for the re/election of directors, unless the nominee sits on a total of more than six public company boards. See <https://www.issgovernance.com/file/policy/2016-asia-pacific-policy-updates.pdf>.

<sup>13</sup> CP A.5.6. – see paragraph 42

<sup>14</sup> Rule 13.92.

<sup>15</sup> CP A.5.5. – see paragraph 28.

<sup>16</sup> Rule 3.13.

15. We also propose to:
- (a) make a consequential amendment to the CP<sup>17</sup> to extend the cooling off period for former partners of the issuer's audit firm from one to three years;
  - (b) recommend disclosure (RBP, i.e. subject to voluntary disclosure) of an INED's cross-directorships in the Corporate Governance Report; and
  - (c) introduce a Note under the Rule recommending the inclusion of person's immediately family member<sup>18</sup> in the assessment of a proposed INED's independence.

### **Nomination policies**

16. The nomination committee is required to disclose a summary of work performed during the year in the annual report. In order to enhance transparency of its policy, we propose to amend the current Mandatory Disclosure Requirement<sup>19</sup> to include disclosure of nomination policy.

### **Directors' attendance of meetings**

17. **General meetings:** We propose to amend the CP<sup>20</sup> to clarify that there is an expectation for non-executive directors ("**NEDs**") including INEDs to attend all general meetings but the absence of any directors at general meetings will not be considered a deviation from the relevant CP.
18. **Chairman's annual meetings with INEDs:** We propose to amend the CP<sup>21</sup> to require that, INEDs (excluding NEDs) should meet with the Chairman at least annually.

### **Dividend policy**

19. We understand from investors that dividend policy is important in assessing the issuer's capital discipline and enables investors to make informed investment decisions. We propose to introduce a CP to require issuers to disclose their dividend policies in their annual reports.

### **Sending corporate communications electronically – implied consent**

20. We seek views from the market on whether consent can be implied to have been given by all shareholders to receive corporate communications electronically. However, a sizeable number of our issuers are Hong Kong incorporated, unless and until Hong Kong's company law is amended to permit implied consent, we would not propose to adopt such a regime.

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<sup>17</sup> See paragraph 62.

<sup>18</sup> Immediate family member is defined in Rule 14A.12(1)(a): his spouse, his (or his spouse's) child or step-child, natural or adopted, under the age of 18 years.

<sup>19</sup> Section L (d)(ii) of the Code.

<sup>20</sup> CP A.6.7 – see paragraph 93.

<sup>21</sup> CP A.2.7 – see paragraph 100.

## About this Paper

21. This consultation paper seeks comments on the proposed amendments to the Code and related Rules.
22. Under the heading “Proposals and Consultation Questions”, Part I discusses proposals relating to INEDs. Part II sets out proposals relating to nomination policy. Part III examines directors’ attendance at meetings. Part IV proposes disclosure requirements on dividend policy. Part V considers the introduction of an implied consent regime for electronic dissemination of corporate communications.
23. We set out in **Appendix I** a draft of the proposed amendments to the Rules and the Code.
24. While this consultation paper focuses on the Main Board Listing Rules, it applies equally to the GEM Listing Rules. We will make equivalent amendments to the GEM Listing Rules.
25. A consultation conclusions paper will be published after the end of the consultation period. We will carefully consider all public comments received. Revisions reflecting comments may be incorporated into the draft amendments of the Rules and the Code.
26. We conducted preliminary discussions with interested groups of practitioners, issuers and investors on our proposals. We thank them for sharing with us their views and suggestions.



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## PROPOSALS AND CONSULTATION QUESTIONS

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### PART I: INDEPENDENT NON-EXECUTIVE DIRECTORS

#### 1. Overboarding and INED's time commitment

##### Current requirements

27. Under Code Principle A.1, the board should regularly review the contribution required from directors to perform their respective responsibilities to the issuer, and whether each director is spending sufficient time performing them.
28. CP A.5.5 provides that where the board proposes a resolution to elect an individual as an INED 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 why they believe the individual should be elected and the reasons why they consider the person to be independent.
29. Under CP A.6.3, directors should ensure that they can give sufficient time and attention to the issuer's affairs and they should not accept an appointment if they cannot.
30. Under CP A.6.6, each director should disclose to the issuer at the time of 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.

##### Issues

31. INEDs play an important role in assuring investor confidence. They act in the interest of the company and the shareholders as a whole, and are expected to exercise independent judgment and oversee and guard against conflicts of interest. However, where a director sits on too many boards, particularly if they are listed companies' boards, it is questionable whether they would be able to devote sufficient time to their duties in respect of each issuer on whose board they sit.
32. In the 2010/2011 Review, we sought market views on whether to introduce a Rule that limits the number of INED positions an individual may hold. An overwhelming majority of respondents did not agree with imposing such a limit. The reasons given included that introducing such a Rule may unfairly penalise competent, diligent INEDs who devote sufficient time to their multiple directorships. The Exchange decided to amend the Code<sup>22</sup> to emphasise the importance of directors' time commitments.
33. Nevertheless, we note there are some market concerns with this issue, especially with a candidate for INED appointment who will be holding his seventh (or more) listed company directorship.<sup>23</sup>

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<sup>22</sup> CP A.6.6 was introduced – see paragraph 30.

<sup>23</sup> See footnote 12.

## Requirements in other jurisdictions

34. The corporate governance codes of the UK<sup>24</sup>, Australia<sup>25</sup> and Singapore,<sup>26</sup> as well as the European Commission's Recommendation<sup>27</sup> all contain similar "comply or explain" provisions as CP A.6.3 and CP A.6.6. The Mainland's code<sup>28</sup> also contains a provision similar to CP A.6.3. Additionally:
- The UK code states that the letter of appointment of NEDs should set out the expected time commitment and that the terms and conditions of appointment of NEDs should be made available for inspection.<sup>29</sup>
  - The Singapore code states that the Board should determine the maximum number of listed company's boards a director may hold and disclose this in the company's annual report.<sup>30</sup>
  - The European Commission's Recommendation requires disclosure of each director's other professional commitments in the company's annual report.
35. None of the jurisdictions examined impose a cap on the number of directorships an individual may hold, except the Mainland. The Mainland's CSRC issued a Guidance imposing a maximum of five INED positions for an individual.<sup>31</sup>

## Consultation proposals

36. We propose to revise CP A.5.5 so that in addition to the CP requiring the board to state in the circular to shareholders accompanying the resolution to elect the INED their reasons for electing him and why they believe the person to be independent, it should explain, if the INED will be holding his seventh (or more) listed company directorship, why the person would still be able to devote sufficient time to the board.
37. Being a director of a public listed company (including those listed on SEHK or other stock exchanges), whether it is executive, non-executive or independent non-executive, requires appropriate time commitments. By including the board's reasons and recommendation in the circular to shareholders prior to voting at the general meeting, shareholders would be able to make better informed voting decisions at the general meeting.
38. It is the responsibility of the nomination committee and the board as a whole to decide whether a proposed INED is able to, or has been adequately carrying out his duties, especially in circumstances where the person will be holding his seventh (or more) listed company directorship. The proposal is not to impose a cap on multiple

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<sup>24</sup> UK Corporate Governance Code ("UK code"): section B.3.

<sup>25</sup> Recommendations 1.2 and 1.3 under Australia's "Corporate Governance Principles and Recommendations 3<sup>rd</sup> edition" ("Australian code").

<sup>26</sup> Guideline 4.4 of the Singapore Code of Corporate Governance ("Singapore code").

<sup>27</sup> Article 12 of the "Commission Recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board 2005/162/EC".

<sup>28</sup> The "Code of Corporate Governance for Listed Companies in China" was issued by the CSRC and the State Economic and Trade Commission on 7 January 2002. Chapter 3, Section 2, Article 34 states that "Directors shall ensure adequate time and energy for the performance of their duties."

<sup>29</sup> UK code: provision B.3.2.

<sup>30</sup> Singapore code: Guideline 4.4.

<sup>31</sup> CSRC's "Guidelines for Introducing Independent Directors to the Board of Directors of Listed Companies" states that "In principle, independent directors can only hold concurrently the post of independent directors in five listed companies at maximum. They shall have enough time and energy to perform the duties of the independent directors effectively."

directorships, rather, it is intended to enhance transparency on the considerations given by the nomination committee or the board in respect of the director's time commitments when the person will be holding his seventh (or more) listed company directorship.

39. We also propose to provide guidance setting out some considerations in assessing whether an INED nominee may be overboarded.

### **Consultation question**

*Question 1: Do you agree with our proposed amendment to CP A.5.5 as described in paragraph 36? Please give reasons for your views.*

## **2. Board diversity**

### **Current requirements**

40. Principle A.3 provides that the board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer's business.
41. For CP A.5.5, see paragraph 28.
42. Under CP A.5.6, the nomination committee (or the board) should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the Corporate Governance Report. The Note under CP A.5.6 states that *"diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience."*
43. Mandatory Disclosure Requirement L.(d)(ii) requires an issuer with a diversity policy should include it or a summary of it in its Corporate Governance Report, and *"any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives"*.
44. The ESG Guide recommends voluntary disclosures on:
- (i) the issuer's total workforce and turnover rate by gender, employment type, age group and geographical region;<sup>32</sup> and
  - (ii) the percentage of employees trained by gender and employee category (e.g. senior management, middle management) and the average training hours completed per employee by gender and employee category.<sup>33</sup>

### **Issues**

45. Although diversity encompasses more than simply gender, the statistics on gender diversity can be obtained with more certainty than other factors such as cultural, educational background and professional experience, etc.. Recent market comments about gender diversity (or the lack thereof) on our issuers' boards, and in particular, the statistics published by the media<sup>34</sup> and various organisations<sup>35</sup> reveal Hong Kong

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<sup>32</sup> ESG Guide KPI B1.1 and KPI B1.2.

<sup>33</sup> ESG Guide KPI B3.1 and KPI B3.2.

<sup>34</sup> "Glass ceilings prove hard to smash", Financial Times, 9 May 2016.

<sup>35</sup> "Women on Boards Hong Kong 2016" published by Community Business, accessible at:

as lagging behind other markets in terms of the ratio of women on boards and appear to fair below the average growth according to some research statistics.<sup>36</sup> There are suggestions that there should be more transparency on the considerations for diversity, during the nomination process of directors.

46. Since the introduction of CP A.5.6 in 2013, there have been some small improvements on the statistics relating to gender diversity. For instance, at the end of 2016, 12.2% of the board members of all issuers were women (10.3% in May 2012) and 35% of the issuers (40% in May 2012) had no women directors on their board.
47. Numerous research and studies indicate that board diversity promotes effective decision-making, enhance corporate governance and is associated with better financial performance.<sup>37</sup>
48. Board diversity is also increasingly important as a factor for investors when making investment decisions and which is an area that our market cannot afford to ignore.<sup>38</sup>

### Requirements in other jurisdictions

49. The corporate governance codes of the UK<sup>39</sup>, Singapore<sup>40</sup> and Australia<sup>41</sup> all contain similar wording as CP A.5.6. In the US, companies are required by law rather than by listing rules to disclose whether, and if so how, a nomination committee considers diversity.<sup>42</sup>
50. Australia's corporate governance code goes further by specifying gender disclosure than other jurisdictions we have examined. The Australian code<sup>43</sup> requires, (on a "comply or explain" basis), a listed issuer should set and disclose measurable objectives for achieving gender diversity whilst our Code (see paragraph 42) refers to diversity without specifying gender.
51. The UK and Singapore codes contain similar provisions as CP A.5.6 in that gender is considered as one of the factors of diversity.

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<http://www.communitybusiness.org/dob/WOB/index.htm>; and Hong Kong Free Press's article: "Women on corporate boards: Rise to the occasion, Hong Kong!" dated 3 June 2017, accessible at:

<https://www.hongkongfp.com/2017/06/03/women-corporate-boards-rise-occasion-hong-kong/>.

<sup>36</sup> See Egon Zehnder's 2016 Global Board Diversity Analysis, accessible at:

[http://www.gbda.online/assets/EZ\\_2016GBDA\\_DIGITAL.pdf](http://www.gbda.online/assets/EZ_2016GBDA_DIGITAL.pdf)

<sup>37</sup> MSCI ESG Research's report "Women on Boards: Global Trends in Gender Diversity on Corporate Boards", November 2015. See <https://www.msci.com/documents/10199/04b6f646-d638-4878-9c61-4eb91748a82b>. Catalyst's report, "The Bottom Line: Corporate Performance and Women's Representation on Boards" (2007) found that companies with the highest representation of women board directors attained significantly higher financial performance, on average, than those with the lowest representation of women board directors. See [http://www.catalyst.org/system/files/The\\_Bottom\\_Line\\_Corporate\\_Performance\\_and\\_Womens\\_Representation\\_on\\_Boards.pdf](http://www.catalyst.org/system/files/The_Bottom_Line_Corporate_Performance_and_Womens_Representation_on_Boards.pdf).

<sup>38</sup> ISS's "Summary of 2017 Methodology Updates" dated 30 October 2017, accessible at

[https://www.issgovernance.com/file/products/1\\_QS-2017-Methodology-Update-27Oct2017.pdf](https://www.issgovernance.com/file/products/1_QS-2017-Methodology-Update-27Oct2017.pdf).

<sup>39</sup> UK code: code provision B. 2.4.

<sup>40</sup> Singapore code: Guideline 2.6.

<sup>41</sup> Australian code: Recommendation 1.5.

<sup>42</sup> Reg S-K, item 407(c)(2)(vi).

<sup>43</sup> Recommendation 1.5.

## Consultation proposals

52. We propose to upgrade CP A.5.6 to a Rule (Rule 13.92) requiring issuers to have a diversity policy and to disclose the policy or a summary of it in their corporate governance reports.
53. In order to improve issuers' performance and transparency in this area, we consider it important for issuers to have and disclose a board diversity policy or a summary of the policy in their Corporate Governance Reports.
54. We also propose to revise CP A.5.5, requiring (on a "comply or explain" basis), so that in addition to the current requirements (see paragraph 28), the board's circular to shareholders accompanying the resolution to elect the director should also set out the process used for identifying the nominee, the perspectives, skills and experience the person is expected to bring to the board and how he would contribute to diversity of the board.
55. By including the board's reasons and recommendations (as described in paragraph 54) in the circular to shareholders prior to voting at the general meeting, shareholders would be able to understand and make better voting decisions at the meeting.
56. We further propose to make consequential amendments to Mandatory Disclosure Requirement L.(d)(ii) to reflect the upgrade described in paragraph 52.

## Consultation questions

*Question 2: Do you agree with our proposals to upgrade CP A.5.6 to a Rule (Rule 13.92) requiring issuers to have a diversity policy and to disclose the policy or a summary of it in their corporate governance reports? Please give reasons for your views.*

*Question 3: Do you agree with our proposal to amend CP A.5.5 that it requires the board to state in the circular to shareholders accompanying the resolution to elect the director:*

*(i) the process used for identifying the nominee;*

*(ii) the perspectives, skills and experience that the person is expected to bring to the board; and*

*(iii) how the nominee would contribute to the diversity of the board.*

*Please give reasons for your views.*

*Question 4: Do you agree with our proposal to amend Mandatory Disclosure Requirement L.(d)(ii) as described in paragraph 56? Please give reasons for your views.*

## 3. Factors affecting INED's independence

### Current requirements

57. Rule 3.13 sets out a detailed but non-exhaustive list of factors that the Exchange takes into account when assessing the independence of INEDs. Under Rule 3.13, independence is more likely to be questioned if the director:

- (1) holds more than 1% of the number of issued shares of the issuer;
  - (2) has received an interest in any of the issuer's securities as a gift, or through other financial assistance, from a core connected person or the issuer itself;
  - (3) is a director, partner, principal or employee of a professional adviser which currently provides, or has within one year immediately before appointment provided, services to the issuer (or its holding or subsidiary companies, or core connected persons) or its controlling shareholder (or, if there was no controlling shareholder, its chief executive or directors (other than INEDs));
  - (4) has a material interest in principal business activities of, or is involved in material business dealings with, the issuer (or its holding or subsidiary companies, or core connected persons);
  - (5) is on the board specifically to protect the interests of an entity whose interests are not the same as those of the shareholders as a whole;
  - (6) is or was connected with a director, the chief executive or a substantial shareholder of the issuer within two years immediately before appointment;
  - (7) is or was an executive or director (other than an INED) of the issuer (or its holding or subsidiary companies, or core connected persons) within two years immediately before appointment; and/or
  - (8) is financially dependent on the issuer (or its holding or subsidiary companies, or core connected persons).
58. Our factors are not hard and fast requirements as Rule 3.13 explicitly states they are included for guidance only and are not intended to be exhaustive. Nonetheless, our Rules in this area are more stringent than a "comply or explain" regime in that if an issuer proposes an individual as an INED who fails to meet any of the independence factors, the issuer will need to demonstrate to the Exchange, prior to appointment, that the individual is independent. The Exchange has the right under the Rules to approve or reject an INED candidate. Following the Exchange's approval, the issuer must disclose the reasons why the individual is considered to be independent in the announcement of the appointment and in the next annual report published after the appointment.<sup>44</sup> Under the "comply or explain" regime, the issuer would simply need to disclose in the Corporate Governance Report its reasons for appointing an individual as an INED despite his failing to meet one or more of the independence factors.
59. The 2010/2011 Review did not propose any amendments to the factors that the Exchange takes into account when assessing the independence of an INED.<sup>45</sup> In view of this, we consider that it may be an appropriate time to conduct a holistic review of the factors affecting the independence of INEDs under our Rules to align with international practice.

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<sup>44</sup> Rule 3.14.

<sup>45</sup> The last amendment to the Rules in this regard was made in 2014, but only as part of the consultation exercise in relation to the definitions of connected person and associate.

## Requirements in other jurisdictions

60. Most of the overseas jurisdictions we examined (the UK, Australia and Singapore) set out the factors affecting directors' independence in their respective corporate governance codes, where the provisions are subject to a "comply or explain" obligation level. Only in Mainland China and the US are these factors set out in mandatory listing rules, similar to the Exchange's approach.

### A. Cooling off periods for former professional advisers

#### Current requirements

61. Rule 3.13(3) states that the Exchange may take into account whether the proposed INED is a director, partner, principal or an employee of a professional adviser which currently provides or has within one year immediately prior to the date of his proposed appointment provided services to the issuer and related entities.
62. CP C.3.2 states that 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 one year from the date of his ceasing to be a partner of the firm or to have a financial interest in the firm, whichever is later.

#### Issue

63. The cooling off period under Rule 3.13(3) is shorter than the majority of overseas jurisdictions we have reviewed. In order to align with international practice, it may be appropriate to lengthen the cooling off period so as to help ensure that the person in question is, and is perceived as being, independent from the issuer. If the proposed amendment to Rule 3.13(3) were to be implemented, it would also be necessary to amend CP C.3.2.

## Requirements in other jurisdictions

64. Australia<sup>46</sup> and the UK<sup>47</sup> (both on a "comply or explain" basis), as well as the US (listing rule)<sup>48</sup> require a cooling off period of three years for professional advisers. The Mainland China (listing rule)<sup>49</sup> and Singapore (subject to "comply or explain")<sup>50</sup> impose an one-year ban.

### Consultation proposals

65. We propose to revise Rule 3.13(3) to extend the cooling off period for a proposed INED who has been a director, partner, principal or an employee of a professional adviser from one year to three years.
66. For the sake of consistency, we also propose amending CP C.3.2 to extend the cooling off period for former partners of the issuer's audit firm to act as a member of the issuer's audit committee from one to three years.

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<sup>46</sup> Australian code: Recommendation 2.3

<sup>47</sup> UK code: provision B.1.1

<sup>48</sup> NYSE Manual – Section 303A.02: Independence Tests

<sup>49</sup> "Measures of the Shenzhen Stock Exchange for the Record-filling of Independent Directors" 深圳證券交易所獨立董事備案辦法 Article 7(5) and (7).

<sup>50</sup> Singapore code Guideline 2.3

67. During our preliminary discussions with stakeholders, some have suggested that the additional two-year cooling off period should be made a CP, i.e. subject to “comply or explain” to provide flexibility. Others thought that there would be greater clarity if all the independence criteria for assessing INED’s independence are in one place, i.e. in the Rules. There was also concern that extending the cooling off period may reduce the pool of available INEDs.
68. We believe that for consistency and clarity, it is preferable for the independence criteria to be in the Rules. We believe there are mixed views about whether there is a shortage of potential INEDs in the market.

### **Consultation questions**

*Question 5: Do you agree with our proposal to revise Rule 3.13 (3) so that there is a three-year cooling off period for professional advisers before they can be considered independent, instead of the current one year? Please give reasons for your views.*

*Question 6: Do you agree with our proposal to revise CP C.3.2 so that there is a three-year cooling off period for a former partner of the issuer’s existing audit firm before he can be a member of the issuer’s audit committee? Please give reasons for your views.*

## **B. Cooling off period in respect of material interests in business activities**

### **Current requirements**

69. Under Rule 3.13(4), the Exchange will take into account a proposed INED’s current material interests in issuer’s principal business activities whilst making no mention of past material interests.

### **Issue**

70. Our Rule<sup>51</sup> only applies where the proposed director has a current material interest in the issuer’s principal business activities. A proposed INED may not be, or may not be perceived, to be independent if he had a material interest in the issuer’s principal business activities in the past year. Not having a cooling off period for this situation is also at odds with international practice.

### **Requirements in other jurisdictions**

71. On a “comply or explain” basis, the UK<sup>52</sup> and Australia<sup>53</sup> require a three-year cooling off period whilst Singapore<sup>54</sup> requires one year.

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<sup>51</sup> Rule 3.13(4).

<sup>52</sup> UK code B.1.1.

<sup>53</sup> Australian code Recommendation 2.3.

<sup>54</sup> Guideline 2.3 of the Singapore code states that a director or an immediate family member of the director is considered not independent if he is or was a 10% shareholder of, or a partner or an executive officer/director of an organisation to which the company has received material services in the current or immediate past financial year.



## Consultation proposal

72. We propose to revise the Rule to introduce a one-year cooling off period for a proposed INED who has had material interests in the issuer's principal business activities in the past year. The proposal does not alter the concept of material interests which is in the current Rule but it takes into account such interests for one year before the proposed appointment of the INED.
73. Our proposal is to address the issue set out in paragraph 70, and to be more aligned with the international best practice.

## Consultation question

*Question 7: Do you agree with our proposal to revise Rule 3.13(4) to introduce a one-year cooling off period for a proposed INED who has had material interests in the issuer's principal business activities in the past year? Please give reasons for your views.*

## C. Cross-directorships or Significant Links with other Directors

### Current requirement

74. There are no restrictions on cross-directorships or having significant links with other directors through involvements in other companies or bodies<sup>55</sup> under our Rules.

### Issue

75. The holding of cross-directorships or having significant links with other directors through involvements in other companies or bodies could undermine an INED's independence.

### Requirements in other jurisdictions

76. The UK code ("comply or explain")<sup>56</sup> states that anyone who holds cross-directorships or has significant links with other directors through involvement in other companies or bodies should not be considered independent.
77. There are no comparable provisions in the other overseas jurisdictions examined (the US, Australia, Singapore and Mainland China).
78. The Hong Kong Monetary Authority issued a "Guidance on the Empowerment of INEDs in Banking Industry in Hong Kong" on 14 December 2016 ("**HKMA Guidance**") which includes cross-directorship as a factor in considering independence of INEDs.<sup>57</sup>

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<sup>55</sup> A cross-directorship exists when two (or more) directors sit on each other's boards.

<sup>56</sup> UK code provision B.1.1.

<sup>57</sup> Paragraph 15(g) of the HKMA Guidance states that, "holds cross directorships or has significant links with other directors through involvement in other companies or bodies that could give rise to conflicts of interest in the proposed role as INED (not including charities or government boards and other public bodies provided they do not give rise to a conflict of interest)."

## Consultation proposal

79. We propose to recommend disclosures (RBP A.3.3, i.e. subject to voluntary disclosure) of an INED's cross-directorships or having significant links with other directors through involvements in other companies or bodies in the Corporate Governance Report so as to improve transparency of INED's relationship with the issuer.

## Consultation question

*Question 8: Do you agree with our proposal to introduce a new RBP A.3.3 to recommend disclosure of INEDs' cross-directorships or having significant links with other directors through involvements in other companies or bodies in the Corporate Governance Report? Please give reasons for your views.*

## D. Family ties

### Current requirements

80. Under our Rule<sup>58</sup>, a proposed INED's immediate family members' independence is not an independence consideration.
81. Rule 14A.12(1)(a) defines an "immediate family member" as "his spouse, his (or his spouse's) child or step-child, natural or adopted, under the age of 18 years".

### Issue

82. The independence of a director may be affected by the independence of the director's immediate family members' connection with the issuer.

### Requirements in other jurisdictions

83. The UK adopts a similar approach to Hong Kong.<sup>59</sup> The approach adopted in Australia,<sup>60</sup> Singapore, the Mainland China<sup>61</sup> and the US<sup>62</sup> is that the independence criteria should also take into account the proposed INED's immediate family members.

### Consultation proposals

84. We propose to introduce a Note under the independence criteria Rule<sup>63</sup> to encourage inclusion of an INED's immediate family members' connection with the issuer in the assessment of their independence under Rule 3.13.
85. For instance, Rule 3.13(2) states that a director's independence is likely to be questioned if he has received a gift or financial assistance from the listed issuer. The new proposal will take into account the director's immediately family member so that if the director has received, or has an immediate family member has received, a gift or financial assistance, his independence will call into question.

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<sup>58</sup> Rule 3.13.

<sup>59</sup> UK code: provision B.1.1.

<sup>60</sup> Australian code: Recommendation 2.3, Box 2.3.

<sup>61</sup> "Guidelines for Establishing the Independent Directors System for Listed Companies", Section 3(1)

<sup>62</sup> NYSE Manual Section 303A.02: Independence Tests.

<sup>63</sup> Rule 3.13.

86. We consider the definition of “immediate family member” in Rule 14A.12(1)(a) is also appropriate for Rule 3.13.

### **Consultation questions**

*Question 9: Do you agree with our proposal to introduce a Note under Rule 3.13 to encourage inclusion of an INED’s immediate family members in the assessment of the director’s independence? Please give reasons for your views.*

*Question 10: Do you agree with our proposal to adopt the same definition for “immediate family member” as Rule 14A.12(1)(a) as set out in paragraph 81? Please give reasons for your views.*

## **PART II: NOMINATION POLICY**

### **Current requirements**

87. Mandatory Disclosure Requirement L.(d)(ii) of Appendix 14 requires disclosure of the summary of work performed by the nomination committee during the year, including determination of the nomination policy; and the nomination procedures and the process and criteria adopted to select and recommend candidates for directorship.
88. Under Code Principle A.3, the board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer’s business.

### **Issue**

89. The nomination committee’s work in relation to independence of INEDs and board diversity is important. There should be more transparency on the issuer’s policy and process that would enable the issuer to achieve the requirement under Code Principle A.3.

### **Requirements in other jurisdictions**

90. There is no requirement for disclosure of a listed entity’s nomination policy in the jurisdictions reviewed (UK, US, Australia, Singapore and Mainland China).

### **Consultation proposals**

91. We propose amending Mandatory Disclosure Requirement L.(d)(ii) of Appendix 14 to state that the issuer should disclose its nomination policy adopted during the year. The policy should set out the board’s consideration of Code Principle A.3, i.e. the board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer’s business.
92. The proposal is aimed at promoting transparency on the issuer’s nomination policy and process that would enable the issuer to achieve the balance of skills, experience and diversity on boards.

### **Consultation question**

*Question 11: Do you agree with our proposal to amend Mandatory Disclosure Requirement L.(d)(ii) of Appendix 14 to require an issuer to disclose its nomination policy adopted during the year? Please give reasons for your views.*

## PART III: DIRECTORS' ATTENDANCE AT MEETINGS

### 1. Directors' attendance at general meetings

#### Current requirement

93. CP A.6.7 provides that INEDs and NEDs as equal board members should give the board and any committees on which they serve the benefits of their skills, experience and varied backgrounds and qualifications through regular attendance and active participation. They should also attend general meetings and develop a balanced understanding of the views of shareholders.

#### Issues

94. A strict interpretation of the last sentence of CP A.6.7 would suggest any directors' absence from a general meeting would result in a deviation from the CP.
95. A Frequently Asked Question was published in March 2013 expressly stating that the Exchange does not consider any directors' absence from a general meeting a deviation from the CP.<sup>64</sup>
96. The Mandatory Disclosure Requirement under Paragraph I(c) already serves the regulatory objective of offering transparency on INEDs' and NEDs' attendance at general meetings.
97. In addition, in January 2017, we reviewed a randomly selected sample of issuers' disclosures of directors' attendance at board meetings under CP A.6.7 for their past financial years and found that there are inconsistencies in the interpretation of the CP.<sup>65</sup>

#### Consultation proposal

98. We propose amending CP A.6.7 to remove the last sentence.
99. The amendment is to better reflect the intention of the CP.

#### Consultation question

*Question 12: Do you agree with our proposal to amend CP A.6.7 by removing the last sentence of the current wording? Please give reasons for your views.*

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<sup>64</sup> At: [http://en-rules.hkex.com.hk/net\\_file\\_store/new\\_rulebooks/f/a/FAQs\\_mb\\_appx14.pdf](http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/f/a/FAQs_mb_appx14.pdf).

<sup>65</sup> In January 2017 we randomly selected 100 Main Board and GEM issuers and examined their disclosures of directors' attendance at general meetings and checked against their disclosures under CP A.6.7. We found that:

- (i) 40 out of 100 issuers stated that they complied with CP A.6.7 but without full attendance by NEDs/INEDs at General Meeting(s).
- (ii) 27 out of 100 companies stated that they deviated from CP A.6.7 since they did not have full attendance by NEDs/INEDs at General Meeting(s).
- (iii) 30 out of 100 companies stated that they had full attendance by NEDs/INEDs at General Meeting(s).

## 2. Chairman's annual meetings with INEDs

### Current requirement

100. Under CP A.2.7, the chairman should at least annually hold meetings with the NEDs (including INEDs) without the executive directors present.

### Issues

101. The purpose of this provision is to enable NEDs (including INEDs) to serve as a more effective check on executive directors and management by meeting separately with the chairman of the board.
102. However, for about 36% of our issuers, the roles of chairman and chief executive are performed by the same person.<sup>66</sup> So, in these cases, the NEDs would in fact be meeting with management. There are suggestions that INEDs are already meeting on a regular basis in forums such as audit committee meetings. However, members of an audit committee may not be exclusively INEDs.

### Requirements in other jurisdictions

103. The Singapore code<sup>67</sup> requires ("comply or explain") that INEDs should meet periodically without other directors, and the lead INED should provide feedback to the Chairman after such meetings. The US<sup>68</sup> also requires INEDs to meet exclusively at least twice a year. The UK code contains a similar code provision as CP A.2.7.

### Consultation proposals

104. We propose to revise CP A.2.7 to state that INEDs should meet at least annually with the chairman even if the chairman is not an INED.
105. Preliminary discussions with stakeholders suggest that there should be a forum for the chairman to meet with INEDs even if he is not an INED. These stakeholders believe that the presence of the chairman encourages INEDs' attendance and the meetings tend to result in more fruitful discussions.
106. In many family-controlled companies, NEDs are family members of the controlling shareholders. A meeting of INEDs including NEDs may not serve the purpose of meeting without the management. There are other forums for NEDs and INEDs to meet, such as audit, remuneration and nomination committee meetings of which both NEDs and INEDs are members.

### Consultation question

*Question 13: Do you agree with our proposal to revise CP A.2.7 to state that INEDs should meet at least annually with the chairman? Please give reasons for your views.*

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<sup>66</sup> See the Exchange's *Analysis of Corporate Governance Practice Disclosure in 2014 Annual Reports*, published in November 2015, available at: [http://www.hkexnews.hk/reports/corpgovpract/Documents/CG\\_Practices\\_2014\\_e.pdf](http://www.hkexnews.hk/reports/corpgovpract/Documents/CG_Practices_2014_e.pdf).

<sup>67</sup> Singapore code: Guidelines 2.8 and 3.4.

<sup>68</sup> Section 303A 03 of the NYSE Manual.

## **PART IV: DIVIDEND POLICY**

### **Current requirements**

107. For listing applicants, HKEX Guidance Letter HKEX-GL86-16 recommends disclosure in a listing document of (i) the listing applicant's expected dividend pay-out ratio, significant distributions and material matters that should be drawn to investors' attention and (ii) where future dividends are subject to discretion of the Board, disclose factors to be considered and where there is currently no intent to pay any dividends, specially state that the company does not have any dividend policy.
108. There are no disclosure requirements on dividend policy by listed issuers.

### **Issue**

109. Dividend policy is a key issue for investors to assess when considering the "character" of the management of a company they may invest in, as it tells investors about capital discipline and attitude to minority shareholders.

### **Requirements in other jurisdictions**

110. Both the UK and the US require listed issuers to disclose their dividend policies.<sup>69</sup> Singapore's corporate governance code requires issuers to have a dividend policy on a "comply or explain" basis.<sup>70</sup> Australia's code recommends (on a voluntary basis) issuers to have dividend policies.<sup>71</sup>
111. Mainland China's CSRC and the Shanghai Stock Exchange have both issued Notice/Directives that listed companies should have dividend policies.<sup>72</sup>

### **Consultation proposal**

112. We propose introducing CP E.1.5 requiring the issuer to disclose its dividend policy in the annual report.
113. The disclosure of dividend policy would allow investors to make a more informed decision when investing in a public listed company.

### **Consultation question**

*Question 14: Do you agree with our proposal to introduce CP E.1.5 requiring the issuer to disclose its dividend policy in the annual report? Please give reasons for your views.*

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<sup>69</sup> UK FSA Handbook Appendix 3 – Minimum Disclosure Requirements for the Share Registration Document 20.7. Dividend Policy: A description of the issuer's policy on dividend distributions and any restrictions thereon. ES SEC Form 20-F – Item 8: Financial Information, Part A, para 8: Describe the company's policy on dividend distributions.

<sup>70</sup> Singapore code Guidelines 15.5: Companies are encouraged to have a policy on payment of dividends and should communicate it to shareholders. Where dividends are not paid, companies should disclose their reasons.

<sup>71</sup> Australian code Commentary under Principle 6: Investors will find it useful if a listed entity includes in an appropriate area of its website: A description of the entity's dividend or distribution policy.

<sup>72</sup> CSRC issued a Notice on 30 November 2013 and the Shanghai Stock Exchange issued a Directive on 7 January 2013 encouraging/ recommending listed companies to include profit distribution methods and dividend policies in the listed companies' constitutional documents.

## **PART V: ELECTRONIC DISSEMINATION OF CORPORATE COMMUNICATIONS – IMPLIED CONSENT**

### **Current requirements**

114. Rule 2.07A(2A) permits the electronic dissemination of corporate communications by issuers provided that that express or deemed consent<sup>73</sup> has been obtained from their shareholders. The requests for consents and election of language for the corporate communications (i.e. English or Chinese) must be by hard copies. Also, whenever new corporate communications are published on the website, the Rules require issuers to notify their shareholders by hard copies.
115. These Rules are consistent with the position under Hong Kong law<sup>74</sup>.

### **Issue**

116. To require hard copy and election letter notification, whenever there is new corporate communication on the issuer's website may be considered outdated and unenvironmental. Consideration should be given to adopting an implied consent regime where consent may be obtained where the articles of association of the issuer state that shareholders shall receive corporate communications via electronic means, without providing an automatic right to receive hard copies.

### **Requirements in other jurisdictions**

117. Similar to Hong Kong, both the UK<sup>75</sup> and Australia<sup>76</sup> allow electronic corporate communication by way of express and deemed consent, but they do not permit implied consent. The US is silent on whether and how companies should obtain consent for electronic corporate communication. Mainland China does not require physical documents to be sent to shareholders.
118. The Singapore Exchange amended its listing rules to allow listed companies to electronically transmit documents to shareholders from 31 March 2017, provided that express, deemed or implied consent has been obtained. However, it is worthy of note that it did so following an amendment made to the Singapore's Companies Act in 2014. In contrast, Hong Kong's company law does not permit implied consent for electronic corporate communications.

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<sup>73</sup> Deemed consent is obtained where shareholders have been given a right to elect whether to receive electronic or physical copies of corporate communications and the shareholder fails to make an election within the specified time period.

<sup>74</sup> Sections 831, 833 and 837 of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

<sup>75</sup> Under UK's Financial Conduct Authority's Disclosure and Transparency Rules, an issuer may use electronic means to convey information to its shareholders who have given their express or deemed consent. However, the UK Companies Act 2006 requires a company to send a hard copy notification to its shareholders to inform them that communications have been published on the website.

<sup>76</sup> Australia's listing rules do not mention issuers' rights to send communications to shareholders electronically. It is a recommendation under Guidance Note 9 of the listing rules that a listed entity should give shareholders the option to receive communications from the entity electronically. Australia's Corporations Act 2001 requires a company to notify its members on at least one occasion in writing that the members may elect once whether they wish to receive a copy of the financial report, and whether they wish to receive a hard copy or an electronic copy. A member who does not make an election will receive a notification in writing, unless he has previously agreed to be notified by a particular electronic means, that the copy of the financial report is accessible on a specified website.

### **Seek Market Views**

119. We seek market views on whether the Rules should be amended to allow shareholders' consent to be implied for electronic dissemination of corporate communications by issuers.
120. In considering this issue, one should bear in mind the fact that as at 31 December 2016, 11.9% of the Main Board and 3.1% of GEM issuers are Hong Kong incorporated. As such, unless and until Hong Kong's company law is amended to permit implied consent, similar to the Singapore Companies Act, we would not propose to adopt such a regime.

### **Consultation question**

*Question 15: Do you think that the Rules should be amended to allow shareholders' consent to be implied for electronic dissemination of corporate communications by issuers? Please give reasons for your views.*



Chapter 3  
GENERAL  
DIRECTORS

...

2.13 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:

...

- (3) is a director, partner or principal of a professional adviser which currently provides or has within ~~one year~~ three years immediately prior to the date of his proposed appointment provided services, or is an employee of such professional adviser who is or has been involved in providing such services during the same period, to:
- (a) the listed issuer, its holding company or any of their respective subsidiaries or core connected persons; or
  - (b) any person who was a controlling shareholder or, where there was no controlling shareholder, any person who was the chief executive or a director (other than an independent non-executive director), of the listed issuer within one year immediately prior to the date of the proposed appointment, or any of their close associates;
- (4) currently, or within one year immediately prior to the date of his proposed appointment, has a material interest in any principal business activity of or is involved in any material business dealing with the listed issuer, its holding company or their respective subsidiaries or with any core connected persons of the listed issuer;

...

(8) ...

Notes: 1. *The factors set out in rule 3.13 ...*

2. *When determining the independence of a director under rule 3.13, the same factors should also apply to the director's immediate family members. "Immediate family member" is defined under rule 14A.12(1)(a).*

**Chapter 13**  
**EQUITY SECURITIES**  
**CONTINUING OBLIGATIONS**

13.92 The nomination committee (or the board) shall have a policy concerning diversity of board members, and shall disclose the policy on diversity or a summary of the policy in the corporate governance report.

*Note: Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.*

**Appendix 14**  
**CORPORATE GOVERNANCE CODE AND CORPORATE**  
**GOVERNANCE REPORT**

...

[View whole section](#)

...

**A.2 Chairman and Chief Executive**

**Code Provisions**

...

A.2.7 The chairman should at least annually hold meetings with the independent non-executive directors (~~including independent non-executive directors~~) without the executive directors present.

...

**A.3 Board composition**

...

**Recommended Best Practice**

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

...

## A.5 Nomination Committee

...

### Code Provisions

...

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:

- (a) the process used for identifying him and why the board believes he should be elected and the reasons why they consider him to be independent;
- (b) if the proposed independent non-executive directorship will be holding his seventh (or more) listed company directorship, why the board believes the person would still be able to devote sufficient time to the board;
- (c) the perspectives, skills and experience that he can bring to the board; and
- (d) how he contributes to diversity of the board.

~~A.5.6 The nomination committee (or the board) should have a policy concerning diversity of board members, and should disclose the policy on diversity or a summary of the policy in the corporate governance report.~~

...

## A.6 Responsibilities of directors

...

### Code Provisions

...

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. ~~They should also attend general meetings and develop a balanced understanding of the views of shareholders.~~

...

### C.3 Audit Committee

...

#### Code Provisions

...

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 4 3 years from the date of his ceasing:

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

...

### COMMUNICATION WITH SHAREHOLDERS

...

#### Code Provisions

...

E.1.5 The issuer should have a policy on payment of dividends and should disclose it in the annual report.

...

### CORPORATE GOVERNANCE REPORT

[View whole section](#) **MANDATORY DISCLOSURE REQUIREMENTS**

...

### L. BOARD COMMITTEES

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

...

- (d) a summary of the work during the year, including:
  - (ii) for the nomination committee, ~~determining~~ 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. 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. ~~If the nomination committee (or the board) has a policy concerning diversity, this~~ 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;

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**APPENDIX II: PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY STATEMENT**

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Hong Kong Exchanges and Clearing Limited and from time to time, its subsidiaries, affiliated companies controlling it or under common control with it and its joint ventures (each such entity, from time to time, being “**HKEX**”, “**we**”, “**us**” or an “**affiliate**” for the purposes of this Privacy Policy Statement as appropriate) recognises its responsibilities in relation to the collection, holding, processing, use and/ or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by HKEX is accurate. HKEX will use your personal data in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, as required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website, continued use by you of the HKEX website shall be deemed to be your acceptance of and consent to this Privacy Policy Statement.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels below.

HKEX will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your request.

## **Purpose**

From time to time we may collect your personal data such as your name, mailing address, telephone number, email address and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

## **Direct marketing**

Except to the extent you have already opted out or in future opt out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to our financial services and information services, and related financial services and information services offered by our affiliates.

If you do not wish to receive any promotional and direct marketing materials from HKEX or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels below.

## **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

## **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out or in future opt out, we may transfer your name, mailing address, telephone number and email address to our affiliates for the purpose of enabling our affiliates to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

## **Other transfers of personal data**

For one or more of the purposes specified above, the personal data may be:

1. transferred to our affiliates and made available to appropriate persons in our affiliates, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong; and
2. supplied to any agent, contractor or third party who provides administrative or other services to HKEX and/ or any of our affiliates in Hong Kong or elsewhere.

## **How we use cookies**

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

## **Compliance with laws and regulations**

You agree that HKEX and its affiliates may be required to retain, process and/ or disclose your personal data in order to comply with applicable laws and regulations, or in order to comply with a court order, subpoena or other legal process, or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere). You also agree that HKEX and its affiliates may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our affiliates and employees.

## **Corporate reorganisation**

As HKEX continues to develop its business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

## **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether HKEX holds your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request HKEX to inform you of the type of personal data held by it. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data (“**Privacy Commissioner**”) which may be found on the official website of the Office of the Privacy Commissioner.

Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEX should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEX’s administrative and actual costs incurred in complying with your data access requests.

## **Termination or cancellation**

Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

## **Contact us**

By Post:  
Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
12/F., One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

By Email:  
[pdpo@hkex.com.hk](mailto:pdpo@hkex.com.hk)



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