

### **Question 1**

**Do you agree with our proposal to introduce a code provision ("CP") requiring an issuer's board to set culture in alignment with issuer's purpose, value and strategy?**

Yes

**Please give reasons for your views.**

We believe the question asks the obvious. Every organisation has a culture (whether it is articulated or not). Culture drives how an organisation behaves and hence ultimately affects its purpose and strategy.

The question should perhaps be rephrased to require each issuer to express give a narrative or "state" its culture and what it does to enforce/promote this culture.

This may help to catch out issues who may not be honest about their cultures and do not say what they really are. In the annual report's MD&A, issuers can be asked to give a narrative of what they have done which in line with their cultures, as publicly expressed. Over time, we believe this will helps to monitor issuers' adherence to their publicly expressed cultures and opens the possibility of those who do not act in accordance with their publicly stated culture to be named and shamed.

We do not believe HKEX or any regulator should dictate the culture of an organisation. Therefore, while it is perfectly acceptable for the HKEX to give guidance on how an issuer can tease out or narrate its culture, it would be unacceptable for the HKEX to dictate the 'acceptable' cultures of Hong Kong listed companies.

### **Question 2a**

**Do you agree with our proposal to introduce a CP requiring establishment of an anti-corruption policy?**

Yes

**Please give reasons for your views.**

We believe the question is somewhat rhetoric. Given corruption is a criminal offence, every issuer must therefore have anti-corruption policy as part of its internal control.

However, just having a policy (even if expressly written) does not help. It must be communicated to the workforce on a regular basis. The issuer needs to implement controls, testing and monitoring of the anti-corruption policy.

At its simplest level, issues can be asked to organise regular anti-corruption workshops for their staffs. At a more complex level, issues can be asked to have regular independent assessment of their anti-corruption policies.

However, we believe it is also important to balance compliance costs with the means of the issues. It should not be a 'one-size-fits-all' and SME issues should not be overly burdened with compliance costs especially when failure of a small number of SME issuers will have no systemic impact on the market. Perhaps HKEX's top 500 companies could be asked to adhere to a higher level of monitoring (such as regular independent assessments) while other issues could simply be asked to narrate the number of anti-corruption awareness programmes they have organised in the year.

### **Question 2b**

**Do you agree with our proposal to upgrade a Recommended Best Practice ("RBP") to CP requiring establishment of a whistleblowing policy?**

Yes

**Please give reasons for your views.**

Please see also comments in Question 2(a).

### **Question 3**

**Do you agree with our proposal to introduce a CP requiring disclosure of a policy to ensure independent views and input are available to the board, and an annual review of the implementation and effectiveness of such policy?**

No

**Please give reasons for your views.**

We do not think these words mean anything.

Every director owes a fiduciary duty to the company and its shareholders. If an INED does not state the INED's views honestly to the board, it goes towards the incompetence of the INED and no amount of additional written policies can change that.

Time could be better spent ensuring that INEDs are better trained and that regular board meetings must be properly documented.

#### **Question 4a**

**Do you agree with our proposal regarding re-election of an independent non-executive director serving more than nine years ("Long Serving INEDs") to revise an existing CP to require (i) independent shareholders' approval; and (ii) additional disclosure on the factors considered, the process and the board or nomination committee's discussion in arriving at the determination in the explanation on why such Long Serving INED is still independent and should be re-elected?**

Yes

**Please give reasons for your views.**

While we believe Long Serving INEDs can continue to be independent and we also believe that Long Serving INEDs can be valuable to an issue, we also believe that familiarity can also breed complacency and undue trust.

We note that in audit, an audit firm is no longer regarded as independent/objective after 5 years.

Therefore, we agree that HKEX should discourage issuers having Long-Serving INEDs.

Issuers who wish to continue having the service of these directors can appoint them as non-executive directors instead of INEDs.

The problem with the existing Listing Rules is that it will require the board size to be increased (to maintain the 1/3 rule) and many issuers may be reluctant to do so.

Some of our members believe that as a compromise, directors who are appointed as non-executive directors after serving nine years as INEDs can be excluded from this 1/3 ratio calculations.

Some of our members believe that the period should be shortened from 9 years to 6 years.

Shortening the time for INEDs to serve will also help to refresh the board and helps to promote diversity quicker.

#### **Question 4b**

**Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new independent non-executive director ("INED") at the forthcoming annual general meeting where all the INEDs on the board are Long Serving INEDs, and disclosing the length of tenure of the Long Serving INEDs on the board on a named basis in the shareholders' circular?**

Yes

**Please give reasons for your views.**

See also comments in Question 4(a).

#### **Question 5**

**Do you agree with our proposal to introduce a new RBP that an issuer generally should not grant equity-based remuneration (e.g. share options or grants) with performance-related elements to INEDs as this may lead to bias in their decision-making and compromise their objectivity and independence?**

No

**Please give reasons for your views.**

Many SME issuers cannot afford to pay a lot of money to INEDs; and hence may not have access to the best qualified INEDs. Giving shares or share options is a way to help bridge this issue.

The existing Listing Rules also dictates the amount of share options an INED can be entitled (which is fairly minuscule) although perhaps a loophole needs to be plugged insofar as share awards outside the share option rules are concerned.

We do not believe a small amount of equity-based remuneration will affect an INED's independence. Not having the means to afford high quality INEDs is probably more problematic.

As far as KPIs are concerned, the INEDs' KPI should be different and issuers should be encouraged to focus INEDs' KPIs on group performance such as corporate governance and share price performance rather than individual performances.

#### **Question 6a**

**Do you agree with our proposal to highlight that diversity is not considered to be achieved by a single gender board in the note of the Rule?**

Yes

**Please give reasons for your views.**

Achieving diversity is a journey.

If there is only one woman on the board to give lip service to diversity, it will be pretty difficult for her voice to be heard.

While it is true that diversity is not considered to be achieved by a single gender board, equally diversity is not achieved by a token presence of another gender. Issuers should be encouraged to work towards boards with more balanced gender participations.

#### **Question 6b**

**Do you agree with our proposal to introduce a Mandatory Disclosure Requirement ("MDR") requiring all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at both: (a) board level; and (b) across the workforce (including senior management)?**

Yes

**Please give reasons for your views.**

Please see also our comments to Question 6(a).

We agree such a MDR would be very useful. It puts into plain sight for investors and shareholders alike the issuer's policies toward diversity. If it fails to meet its targets/timelines, it can be named and shamed as it will have to disclose its failure to meet the objectives it sets itself.

Public pressure can perhaps help to persuade those who do not embrace diversity to start doing so.

However, we believe more education is needed to change the mindset of companies. For an issuer, achieving diversity is about achieving diversity of thoughts, not just to have different genders on the board.

Directors are now required to undertake yearly training. Such training should encompass diversity, unconscious biasness and other similar topics; not just the hard letters of the Listing Rules and the law.

Larger issuers (especially those 500 largest issuers on HKEX) should be encouraged to take the lead so that others may follow. They could be encouraged to set spiralling targets for the workforce, senior leaderships companies. For example, they could be encouraged to set 20% diversity going to 30% and then parity in X number of years.

Eventually, issuers should be encouraged to move beyond gender and look at diversity re cultures, backgrounds, race and ethnicities. The ultimate aim is to achieve diversity of thoughts leaders. Above all, diversity is aimed at, and will achieve better corporate governance with better representation of different gender, race and age.

For the time being, gender inequality has the greatest need for rebalancing in Hong Kong and achieving diversity of gender is probably the most impactful.

#### **Question 6c**

**Do you agree with our proposal to introduce a CP requiring the board to review the implementation and effectiveness of its board diversity policy annually?**

Yes

**Please give reasons for your views.**

As a matter of best practices, issuers should make this part of the annual evaluation of the Board's performance.

#### **Question 6d**

**Do you agree with our proposal to amend the relevant forms to include directors' gender information?**

Yes

**Please give reasons for your views.**

However, in order not to discriminate against those who are gender fluid, disclosure should perhaps be voluntary.

Including a disclosure for the 'third gender' may also be culturally unacceptable in Hong Kong as some might not wish their alter-gender known to the Hong Kong public.

We need to ensure that the relevant director is comfortable with disclosing that director's gender.

#### **Question 7**

**Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a nomination committee chaired by an INED and comprising a majority of INEDs?**

Yes

**Please give reasons for your views.**

#### **Question 8**

**Do you agree with our proposal to upgrade a CP to a MDR to require disclosure of the issuer's shareholders communication policy (which includes channels for shareholders to communicate their views on various matters affecting issuers, as well as steps taken to solicit and understand the views of shareholders and stakeholders) and annual review of such policy to ensure its effectiveness?**

Yes

**Please give reasons for your views.**

#### **Question 9**

**Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements?**

Yes

**Please give reasons for your views.**

We are fine with the implementation of this but do not feel that this is critical.

However, given the advent of technology and remote video conferencing, we feel that it should be harder for directors not to attend general meetings, whether in person or remotely.

#### **Question 10**

**Do you agree with our proposal to delete the CP that requires issuers to appoint non-executive directors for a specific term?**

Yes

**Please give reasons for your views.**

#### **Question 11**

**Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between corporate governance and environmental, social and governance ("ESG") in the introductory section; and (b) including ESG risks in the context of risk management under the Code?**

Yes

**Please give reasons for your views.**

We believe commitment to ESG should be at the heart of the top management, and not left to the oversight of a particular group of individuals in an organisation. Top management needs to have ownership of the ESG strategies and must determine how its own organisation should address ESG issues.

However, we agree that the risks management team is best equipped to track the implementation of the organisation's ESG strategies.



**Question 12**

**Do you agree with our proposal to amend the Rules and the ESG Guide to require publication of ESG reports at the same time as publication of annual reports?**

Yes

**Please give reasons for your views.**

**Question 13**

**Do you have any comments on how the re-arranged Code is drafted in the form set out in Appendices III and IV to the Consultation Paper and whether it will give rise to any ambiguities or unintended consequences?**

No

**Please give reasons for your views.**

**Question 14**

**In addition to the topics mentioned in the Consultation Paper, do you have any comments regarding what to be included in the new guidance letter on corporate governance (i.e. CG GL) which may be helpful to issuers for achieving the Principles set out in the Code?**

No

**Please give reasons for your views.**

**Question 15a**

**Do you agree with our proposed implementation dates for all proposals (except the proposals on Long Serving INED): the financial year commencing on or after 1 January 2022?**

Yes

**Please give reasons for your views.**

**Question 15b**

**Do you agree with our proposed implementation dates for proposals on Long Serving INED: the financial year commencing on or after 1 January 2023?**

Yes

**Please give reasons for your views.**

Perhaps issuer can be encouraged to voluntary adopt this earlier.

Between 2022-2023, the issuers should be asked to articulate a strategy to phase out long serving INEDs.