

Part B Consultation Questions

Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/March-2021-Listing-Regime/Consultation-Paper/cp202103.pdf>. Please indicate your preference by ticking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages.

We encourage you to read all of the following questions before responding.

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

No

Please give reasons for your views.

We are of the view that this could encourage issuers in their work of tone-setting from the top. The resultant alignment would also pave way for achievement of their purpose and values.

We note that effective communication with both employees and shareholders, as well as the wider stakeholder community would be essential. Regular monitoring of the implementation structure would also be necessary. The Exchange could consider to issue more guidance to assist issuers in building a sustainable culture.

- 2(a). Do you agree with our proposal to introduce a CP requiring establishment of an anti-corruption policy?

Yes

No

Please give reasons for your views.

From the perspective of issuers, corruption poses severe legal, financial, operational and reputational risks - we agree that the formulation and implementation of an anti-corruption policy could mitigate risks and protect shareholder value.

The introduction of the new CP could also strengthen Hong Kong's position as a leading anti-corruption city in the world.

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

Yes

No

Please give reasons for your views.

At present, compared to certain jurisdictions, there is no standalone and integrated whistleblowing protection regime in Hong Kong. We observe that there has been comments as to whether efficiency could be achieved in this fragmented policy environment.

The establishment of a whistleblowing policy could encourage employees and stakeholders to voice concerns about any actual or potential misconduct that may be occurring in the workplace, and thus enabling issuers to react at the earliest opportunity. The culture of dialogue could help mitigate the potential risk of shareholder and stakeholder activism.

We note that this proposal is also in line with the international trend to further enhance whistleblowing protection, as evidenced by the Whistleblowing Directive of the European Union, which is gradually being implemented across member states.

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?

Yes

No

Please provide these other standards with reasons for your views.

The inclusion of independent views could reduce the risk of group-think and enhance the board's quality of decision-making.

4(a). 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

No

Please give reasons for your views.

The new amendments could increase transparency in board decision-making process and succession planning.

- 4(b). 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

No

Please give reasons for your views.

The length of tenure of INEDs should not on its own attribute to a lack of independence of such INEDs. Furthermore, it may be difficult to find suitable candidates with the type of skills and exposure to the issuers' particular sectors.

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?

Yes

No

Please give reasons for your views.

The proposed amendments could mitigate against the risk of loss of objectivity and independence.

- 6(a). 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

No

Please give reasons for your views.

We consider that a mixed gender board could benefit issuers by bringing together different viewpoints and skills.

6(b). 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

No

Please give reasons for your views.

While target-setting has been shown to be effective globally in increasing board diversity and the imposition of a timeline could render targets more measurable and assist in recruitment and succession planning, we consider that the proposed change should be implemented as a Recommended Best Practice for the following reasons:

(a) corporate value is maintained by appointing candidates with requisite qualifications to their corresponding roles. In certain sectors, issuers may face difficulty in recruiting candidates from one gender, not just from the board level, but across the workforce. Improvements in this situation may take considerable time. As a result, it may not be realistic for issuers from certain sectors to set targets; and

(b) issuers may treat this new proposal as a box-ticking exercise by setting easily achievable targets, which will run against the rationale of the amendment.

We note that the Exchange has indicated that a new guidance letter in relation to corporate governance would be issued to issuers. The Exchange should consider to clarify the granularity of disclosure and provide industry-specific guidance for issuers.

6(c). 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

No

Please give reasons for your views.

The requirement of regular review could assist issuers in responding to the needs of the issuers and the evolving business environment.

6(d). Do you agree with our proposal to amend the relevant forms to include directors' gender information?

Yes

No

Please give reasons for your views.

The inclusion of such information in forms could enhance transparency, as the genders of the directors may not be immediately apparent from their names.

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

No

Please give reasons for your views.

The independence of the nomination committee could be enhanced if it is chaired by an INED and comprising a majority of INEDs.

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

No

Please give reasons for your views.

The amendment could improve transparency and shareholder communication.

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

Yes

No

Please give reasons for your views.

This could enhance the transparency of board meetings and is not particularly onerous on issuers.

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

Yes

No

Please give reasons for your views.

As there is currently a rotation requirement, we agree to delete this CP.

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

No

Please give reasons for your views.

This could assist issuers in understanding the significance of ESG, as it is at once investment for shareholder value and a mitigation against future risks.

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

No

Please give reasons for your views.

This may not be practicable for issuers of smaller size, as they may lack the resources to prepare the ESG report simultaneously with annual reports. The quality of reporting may also be impacted.

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?

Yes

No

Please give reasons for your views.

We consider the Code in its proposed form to be acceptable.

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?

Yes

No

Please give reasons for your views.

As stated above in our response to Question 6(b), the Exchange should consider to specify the granularity required for disclosure of diversity in the workforce, and issue industry-specific guidance on target-setting and disclosure guidelines.

In relation to INEDs, the Exchange could consider to issue guidance in relation to factors to consider and basis of INED remuneration, as the appointment and retention of quality INED candidates is pivotal to the success of the board. There appears to be a wide divergence on the level of remuneration in the market and issuers would benefit from guidance on the subject.

15(a). 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

No

Please give reasons for your views.

It may take time for issuers to formulate suitable policies, strategies and responses. As the impact of the COVID-19 pandemic continues to be felt globally across all industries, issuers may not have the requisite time and resources to respond in such a rapid manner.

The Exchange has also stated that a grace period of three years would be given to issuers with single gender boards to appoint at least one director of the absent gender. We consider that it may not be practicable for issuers of certain industries to find suitably qualified candidates within the proposed timeline.

15(b). 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

No

Please give reasons for your views.

Please refer to our response to Question 4(b).

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