

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.

I agree with the proposed amendment. My reasons are set out in the following paragraphs.

Limitations to INEDs' time

One of the fundamental problems with INEDs is that they can be, at best, no more than part-time directors. Consequently, there is a clear limit on what can be reasonably expected of them and what they can achieve quite irrespective of the individuals' own personal qualities and experience.

Increase in INEDs' responsibilities

Despite the limitations to INEDs' time, the hard fact is that the functions which they are now expected to discharge are significant and are continually increasing. The memberships of three core board committees, the audit, remuneration and nomination committees should consist exclusively of INEDs or a majority of INEDs. Furthermore, as a consequence of court rulings regarding the degree to which an INED is expected to exercise a duty of care, INEDs having appropriate professional qualifications, such as legal and accountancy qualifications or related financial management expertise, would run a higher risk than directors not so qualified.

Need to ensure INEDs' engagement

As "part timers", INEDs will always lack the in-depth and continuous knowledge of a company's affairs compared with the company's EDs and senior management. However, precisely because they are part-timers, it is essential that they are fully engaged with the company's affairs both inside and outside the boardroom. It is therefore important that a person does not accept an invitation to serve as an INED on a company's board unless they can devote adequate time and effort to the work involved.

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.

I agree with the proposed amendment. My reasons are set out in the following paragraphs.

The benefits of board diversity

Paragraph 47 of the Consultation Paper makes clear that numerous studies have indicated that board diversity promotes effective decision making (by preventing ‘groupthink’), enhances corporate governance and is associated with better corporate and financial performance. Keeping in touch with the concerns and expectations of a company’s stakeholders is also much easier when the board’s composition reflects that of its major shareholders. Furthermore, board diversity will ensure that the board taps into a greater well of talent, particularly given that 48.0% of Hong Kong’s labour force are women and 56.0% i.e. over half, of university graduates are women. As a consequence of all these factors, board diversity can only enhance a company’s corporate reputation.

The need to ensure effective compliance with the requirement to have a diversity policy

Despite the clear benefits in having a diversity policy, it is clear that there is still a considerable way to go in the area of greater gender equality on listed company boards. Paragraph 46 states that, despite the introduction of CP A.5.6 in 2013, at the end of 2016, only 12.2% of the board members of all issuers were women and 35% of issuers had no women on their boards. Although this only one, albeit a very important, element in board diversity, it is not unlikely that this also indicates a marked failure to enhance board diversity in other areas such as age, background and skill-sets. Given the clear lack of progress by issuers to reform in this critically important area, it is necessary to upgrade CP A.5.6. to a listing rule in order to ensure better compliance.

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.**

I agree with the proposed amendment. The directors are the people who will make the company and the company’s corporate governance work effectively and efficiently. It is, therefore, vitally important for the shareholders to have information regarding the process used to identify the nominee; the

perspectives, skills and experience which the person is expected to bring to the board; and how the nominee would contribute to the diversity of the board.

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.

I agree with the proposed amendment. It is a necessary consequence of the proposal to upgrade CP A.5.6. to a Listing Rule.

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.

I agree with the proposed amendment as a period of one year is too short a time for any prospective INED to be considered independent if they have been previously working for a professional firm providing services to the company. It will also bring Hong Kong's requirements regarding cooling off periods for professional advisers into line with those in the majority of the five jurisdictions surveyed (the US, UK and Australia).

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.

I agree with the proposed amendment which flows as an automatic consequence of the proposed amendment to Listing Rule 3.13 (3).

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.

I agree with the proposed amendment. If a proposed INED has had material interests in an issuer's principal business activities in the past year, there will always be a perception problem as to whether or not he or she can be considered to be "independent" of the company. It will also bring Hong Kong's requirements regarding cooling off periods for proposed INEDs into line with those jurisdictions which already have such a requirement.

Although the UK and Australia have longer cooling off periods of three as opposed to one year, these are found in the corporate governance codes and,

similar to Singapore, which only has a one year cooling off period, are subject to a 'comply or explain' regime. By comparison, the equivalent requirement in Hong Kong, if approved, will be found in the Listing Rules and, as such, be mandatory. As Hong Kong will, therefore, appear to be the first jurisdiction to contain such a requirement in the Listing Rules, it would be appropriate to limit the cooling off period to one year, at least in the first instance. This length of this period can, however, be reviewed in the light of experience. In this respect, there is no obviously apparent reason for having differing cooling off periods for proposed INEDs who were either professional advisers to an issuer (three years) or had material interests in an issuer (one year): both factors can be considered as comprising a potential INED's independence.

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.

I agree with the proposed amendment. If an INED holds cross-directorships or has significant links with other directors through involvement in other companies or bodies, it could undermine his or her independence and perceptions of his or her independence. As out of the five jurisdictions surveyed, only the UK has an equivalent provision in the Corporate Governance Code, it would be preferable to introduce this requirement by way of a recommended best practice. This can and should, however, be reviewed in the light of experience.

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.

I agree with the proposed amendment. Given the closely-knit nature of Hong Kong corporate society, an INED's actual and perceived independence, could be adversely affected by his or her immediate family members (as defined) relationships with an issuer. Furthermore, four out of the five jurisdictions surveyed include an INED's immediate family members in the assessment of his or her independence.

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.

I agree with the proposed amendment which flows as an automatic consequence of the proposal to include immediate family members in the assessment of an INED’s independence. In the longer term, however, it may be necessary to review the definition of “immediate family member” in Rule 14A.12(1)(a) as this is not identical to the definition of a family member in section 487 of the Companies Ordinance. In particular, the definition in the Listing Rules does not include a parent of a director whereas that in the Companies Ordinance does.

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.

I agree with the proposed amendment. A previous study by the Hong Kong Institute of Chartered Secretaries in January 2006 (“The Duties and Responsibilities of Independent Non-Executive Directors of Hong Kong of Hong Kong Main Board Listed Companies”) concluded that the major problem regarding INEDs in Hong Kong was not the lack of supply but rather ‘a lack of effective means to identify and recruit the right talent (for the boardrooms of listed companies)’. The study stated that the usual practice was for listed companies to invite people with boardroom or top management experience to be their INEDs. The whole process was somewhat informal and depended to a considerable extent on who knew whom rather than on what the company needed. While previous boardroom experience was doubtless valuable, it did not guarantee the four personal attributes of NEDs highlighted by the UK Higgs Report (2003): integrity and high ethical standards; sound judgment; the ability and willingness to challenge and probe; and strong inter-personal skills. Furthermore, and very importantly, it did not and could not guarantee that the candidate had the experience, expertise and skill-sets required by the company.

To some extent, this situation has improved since the formation of Nomination Committees in listed companies after the implementation of CP A.5.1. w.e.f. 1 April 2012. In many ways, Nomination Committees are the most important board committees because they deal with the identification and appointment of people who will make the company and the company’s corporate governance system work, namely the directors. However, the way in which they operate and the process whereby a company formulates its nomination policy needs to be far more systematic and transparent. It is, therefore, somewhat surprising that none of the five surveyed jurisdictions have such a requirement but this is certainly

not a reason why Hong Kong should delay in its introduction. The proposed amendment is also a logical consequence of the amendment to CP A.5.5 in Question 3 to set out the process used to identify the nominee; the perspectives, skills and experience which the person is expected to bring to the board; and how the nominee would contribute to the diversity of the board.

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.

I agree with the proposed amendment. The current wording of CP A.6.7 is rather ambiguous while Section I (c) regarding Mandatory Disclosure Requirements makes clear that issuers must include details of directors' to attendance at general meetings in a company's annual report.

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.

I agree with the proposed amendment. Although the positions of chairman and chief executive are merged in 36% of listed companies, the fact remains that the chairman and chief executive have very different functions, roles and responsibilities, and the chairman's duties still need to be discharged. If one person is both chairman and chief executive, this may complicate matters but does not make it impossible for him or her to assume the chairman's role when meeting the INEDs. It is also very important for the INEDs to meet from time to time quite independently of the management in order to share views.

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.

I agree with the proposed amendment for the reasons given in paragraph 109. A company's dividend policy is a key issue in investors' consideration as it tells investors them about the company's capital discipline and attitude to minority shareholders. Furthermore, all the five jurisdictions surveyed have a similar requirement

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.

I do not agree with such an amendment for several reasons. First, it would create a regulatory discrepancy between the provisions of the Companies

Ordinance (which provide for “deemed consent”) and the Listing Rules although only 11.9% of Main Board Issuers and 3.1% of GEM Board issuers are incorporated in Hong Kong. Secondly, it would be nonsensical to subject these companies simultaneously to a “deemed consent” requirement in the CO and an “implied consent requirement” in the Listing Rules which would create significant scope for legal dispute. Thirdly, with the exception of Singapore, where the Singaporean Companies Act has been amended to permit “implied consent”, none of the other surveyed jurisdictions permits implied consent.