



STRICTLY PRIVATE AND CONFIDENTIAL

30 November 2017

Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

To whom this may concern,

Re: Consultation Paper on the Review of the Corporate Governance Code and Related Listing Rules (“Consultation”).

The Women’s Foundation thanks Hong Kong Exchanges and Clearing Limited (HKEX) for issuing the Consultation and is pleased to make a submission.

The Women’s Foundation is a Hong Kong NGO dedicated to improving the lives of women and girls in Hong Kong. One of our key objectives is to advance women leaders in Hong Kong. Since our founding in 2004 over 800 women in Hong Kong have participated in our best in class cross industry mentoring programme, over 100 Women’s Networks in Hong Kong have accessed our best practice guides and in 2013 we launched the 30% Club Hong Kong – a group of Hong Kong Chairmen and business leaders committed to bringing more women onto Hong Kong corporate boards. We currently have 55 members of 30% Club and 400 Women to Watch (Board ready women who participate in activities of the 30% Club).

In addition, we work with or are supported by over 150 cross sector corporate organisations.

The Women’s Foundation is pleased to note the focus of the HKEX on Board diversity in its 2017 Review of the HK Corporate Governance Code and Related Listing Rules and to have an opportunity to provide comments on the Consultation Proposals. Please note that we comment specifically on areas relevant to our mission and have marked those Consultation Proposals for which we have no specific comment.

In short, The Women’s Foundation does not think that the Consultation Proposals will achieve the stated aim of improving issuers’ performance and transparency in respect to Board diversity. The Women’s Foundation encourages the HKEX to take this opportunity to introduce meaningful and bold change to the Corporate Governance Code through this review process, in order to drive the change HKEX recognises is needed to the Boards of Hong Kong issuers.

To drive this change, we see the following aspects as vital:

- A specific focus on diversity, in particular gender diversity - Gender focus is relevant simply because women represent 50% of the population and if we cannot achieve change with majority groups, we have little hope elsewhere;



- Increasing the pace of change - In order to drive change, turnover of directors becomes critical and consequently issues such as term limits are relevant;
- Improving processes for board diversity review - we suggest specific guidance on these be included in the Corporate Governance Code.

Without significant and urgent reform, Hong Kong's market will continue to fall behind other markets. The weight of expectation of investment money is increasingly on strong governance and diversity, including gender diversity, which is seen as hallmarks of good corporate governance. If the Hong Kong market cannot provide indications of strong governance, then investors will look elsewhere to invest.

Yours faithfully,



Ms Fiona Nott
For and on behalf of
The Women's Foundation

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:

<https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017111.pdf>.

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

PART I: INDEPENDENT NON-EXECUTIVE DIRECTORS

Overboarding and INED's time commitment

1. Do you agree with our proposed amendment to Code Provision ("CP") A.5.5 (on a "comply or explain" basis) so that in addition to the CP's current requirements, the board should also explain, if the proposed independent non-executive director ("INED") will be holding his seventh (or more) listed company directorship, why he would still be able to devote sufficient time to the board?

Yes

No

Please give reasons for your views.

We have no comment on this proposed amendment.

Board diversity

2. Do you agree with our proposals to upgrade CP A.5.6 (on a "comply or explain" basis) 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?

Yes

No

Please give reasons for your views.

The Consultation Paper cites various research and studies indicating that board diversity promotes effective decision-making, enhances corporate governance and is associated with better financial performance and notes that board diversity is an increasingly important factor for investors when making investment decisions. Despite this, as at the end of 2016, only 13.3% of Board members of all Hong Kong issuers were women. Since the introduction of CP A.5.6 in 2013, there have been only small improvements in the numbers of women on Boards. In our view, this is a clear indication that current requirements have had limited impact on improving diversity on boards.

The Women's Foundation believes that this is partially due to the comply or explain nature of CP A.5.6 and partially also due to the fact it can be complied with by the adoption of minimum standards. As such, whilst The Women's Foundation welcomes the upgrading of CP A.5.6 to a Rule, the absence of any enhancement to the wording of the code provision to include a specific requirement for the achievement of gender diversity together with recommended best practice for the content of the diversity policy itself including a requirement for measurable objectives following the example in the Australian ASX Principles, will not drive the change needed to ensure Hong Kong is able to catch up and emulate those markets which it lags behind. We also suggest following the approach in the Australian ASX Principles of including suggestions for the content of a diversity policy and we have adopted their wording in large part sector.

The Women's Foundation suggests the following enhanced wording to CP A.5.6:

"The nomination committee (or the board) should have a policy concerning diversity, including gender diversity, of board members and should disclose the policy or a summary of the policy in the corporate governance report, with a link to the issuer's website to allow access to the full policy.

Note: Board diversity will differ according to the circumstances of each issuer. Diversity is not limited to gender and can include factors such as age, cultural and educational background and 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. However, the diversity policy should, as a minimum, be designed to achieve an appropriate balance of skills, experience, diversity of perspectives appropriate to the requirements of the issuer's business and diversity of gender and require the setting of measurable objectives for achieving this balance.

In addition to addressing the matters referred to above, an issuer's diversity policy could:

continue ...

1. Articulate the corporate benefits of diversity in a competitive labour market and the importance of being able to attract, retain and motivate employees from the widest possible pool of available talent.
2. Express the organisation's commitment to diversity at all levels.
3. Recognise that diversity not only includes gender diversity but also includes matters of age, disability, ethnicity, marital or family status, religious or cultural background, educational background and professional experience.
4. Emphasise that in order to have a properly functioning diverse workplace, discrimination cannot and will not be tolerated.
5. Ensure that recruitment and selection practices at all levels (from the board downwards) are appropriately structured so that a diverse range of candidates are considered and that there are no conscious or unconscious biases that might discriminate against certain candidates.
6. Identify and implement programmes that will assist in the development of a broader and more diverse pool of skilled and experienced employees and that, over time, will prepare them for senior management and board positions.
7. Introduce key performance indicators for senior executives to measure the achievement of diversity objectives and link part of their remuneration (either directly or as part of a "balanced scorecard" approach) to the achievement of those objectives."

Finally, The Women's Foundation believes that CP B.1.9 should be enhanced to require annual internal evaluation of the performance of each board member with external evaluation to be conducted every three years. The Women's Foundation recommend the following change to the wording of CP B.1.9:

"The board should conduct a formal and rigorous evaluation of its own performance on an annual basis which should be externally facilitated at least once every three years."

Diversity of perspective is undermined by entrenched boards with members who have been too long in situ. As such, and in line with many other jurisdictions around the world, we believe that limiting the tenure of independent directors is now a significant issue for boards in Hong Kong. We suggest limiting the tenure of independent directors to nine years. In the case of existing directors with more than nine years' tenure, they should be permitted three more years following the AGM after imposition of this policy.

3. Do you agree with our proposal to amend CP A.5.5 that it requires (on a “comply or explain” basis) 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.

Yes

No

Please give reasons for your views.

The Women's Foundation believes that the Consultation Proposals to amend CP A.5.5 will bring rigour to the requirements to be followed by the Board in connection with the appointment of directors as a feature of good corporate governance. However, in the absence of a specific requirement that the identification of the perspectives, skills and experience the person is expected to bring to the Board be linked to the diversity policy set by the issuer, this requirement can be met without any reference to or impact on gender diversity. Similarly, the absence of a specific requirement to link the identification of how the nominee would contribute to the diversity of the Board to the diversity policy will mean that this proposal will be of limited impact to driving gender diversity.

The Women's Foundation recommends that the wording of CP A.5.5 be amended as follows:

"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 in an explanatory statement accompanying the notice of the relevant general meeting the following information:

- (i) The process used for identifying the nominee;
- (ii) The perspectives, skills and experience that the person is expected to bring to the board by reference to the diversity policy of the issuer;
- (iii) How the nominee would contribute to the diversity of the board by reference to the diversity policy of the issuer; and
- (iv) If the proposed independent non-executive director will be holding his or her seventh (or more) listed company directorship, why they would still be able to devote sufficient time to the board."

The circular or notice should also represent in a numerical and graphical form the composition of the incumbent Board by reference to the factors in the diversity policy and length of service and how these factors would change following the election of the nominated individual. A skills matrix should be used as a best practice approach.

The Women's Foundation has a further concern which relates to the lack of "voice" of minority shareholders with respect to the election of independent directors. A significant proportion of companies listed on HKEx have a block shareholder, either family or state, and such shareholders have a significant influence over the nomination process. We would like to see minority shareholders have a greater voice by requiring separate disclosure of minority shareholder voting for the election of independent directors and where there is not majority support from minority shareholders, that independent director is required to stand for re-election at the following AGM. This process continues until majority support is achieved. We believe this process will reinforce to independent shareholders that they have a fiduciary duty not just to the block directors that was responsible for their appointment to the board but to all shareholders.

4. Do you agree with our proposal to amend Mandatory Disclosure Requirement L.(d)(ii) to reflect the upgrade of CP A.5.6 (on a “comply or explain” basis) 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?

Yes

No

Please give reasons for your views.

The Women's Foundation agrees with the proposal to amend Mandatory Disclosure Requirement L.(d)(ii) to reflect the upgrade of CP A.5.6 to a Rule.

Factors affecting INED's independence

A. Cooling off periods for former professional advisers

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?

Yes

No

Please give reasons for your views.

We have no comment on this proposal.

6. Do you agree with our proposal to revise CP C.3.2 (on a "comply or explain" basis) 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?

Yes

No

Please give reasons for your views.

We have no comment on this proposal.

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

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?

Yes

No

Please give reasons for your views.

We have no comment on this proposal.

C. Cross-directorships or Significant Links with other Directors

8. Do you agree with our proposal to introduce a new Recommended Best Practice A.3.3 (i.e. voluntary) to recommend disclosure of INEDs' cross-directorships in the Corporate Governance Report?

Yes

No

Please give reasons for your views.

We have no comment on this proposal.

D. Family ties

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?

Yes

No

Please give reasons for your views.

We have no comment on this proposal.

10. Do you agree with our proposal to adopt the same definition for "immediate family member" as Rule 14A.12(1)(a) which 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"?

Yes

No

Please give reasons for your views.

PART II: NOMINATION POLICY

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?

Yes

No

Please give reasons for your views.

The Women's Foundation agrees with the proposal to amend the Mandatory Disclosure Requirement L.(d)(ii) to require an issuer to disclose its nomination policy and recommends the following wording changes:

"(ii) for the nomination committee, determining 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 policy itself which should, at a minimum, include the process by which the nomination committee identifies potential candidates, the selection criteria, the use of external consultants, a description of the vetting process adopted. The actual nomination procedures and the processes 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. An evaluation in accordance with the evaluation process and procedures set out in the terms of reference of the nomination committee as to how well the nomination committee or the board of directors (if there is no nomination committee) has met the measurable objectives of the diversity policy. [If the nomination committee (or the board) has a diversity policy.....etc]"

The Women's Foundation believes that the nomination committee of a Board can be an effective agent of change and is of the view that this could be the case in Hong Kong by including recommended best practice in CP D.2.3 regarding the nomination committee's terms of reference. We think issues such as, a focus on how the skills of the Board assist the issuer in the delivery of its corporate strategy, a requirement to focus on long-term succession planning, the setting of measurable targets in respect of the diversity policy and a transparent evaluation of their own performance would all be important. The evaluation of performance should be included in the committee's annual summary of the work it has done during the year, including a clear report on how well it has met the measurable targets set by the Board. It should disclose at the end of the reporting period the measurable objectives for achieving gender diversity set by the board or the relevant committee of the board in accordance with the company's diversity policy and their progress towards achieving those objectives by disclosing the respective proportions of men and women on the board, in senior executive positions and across the whole organisation (including how the entity has defined "senior executive" for these purposes).

We suggest that the following wording could be added to CP D.2:

"D.2.3 The terms of reference for the nomination committee or a summary of it should be included in the annual report and should, at a minimum, include its composition and quorum, process and procedures, a requirement to focus on how the skills of the Board assist the issuer in the delivery of its corporate strategy and on long-term succession planning, the adoption of a selection criteria, the setting of measurable targets in respect of the achievement of the diversity policy and an obligation to conduct a transparent evaluation of its own performance."

PART III: DIRECTORS' ATTENDANCE AT MEETINGS

Directors' attendance at general meetings

12. Do you agree with our proposal to amend CP A.6.7 (on a “comply or explain” basis) by removing the last sentence of the current wording (i.e. they should also attend general meetings and develop a balanced understanding of the views of shareholders.)?

Yes

No

Please give reasons for your views.

We have no comment on this proposal.

Chairman’s annual meetings with INEDs

13. Do you agree with our proposal to revise CP A.2.7 (on a “comply or explain” basis) to state that INEDs should meet at least annually with the chairman?

Yes

No

Please give reasons for your views.

We have no comment on this proposal.

PART IV: DIVIDEND POLICY

14. Do you agree with our proposal to introduce CP E.1.5 requiring (on a “comply or explain” basis) the issuer to disclose its dividend policy in the annual report?

Yes

No

Please give reasons for your views.

We have no comment on this proposal.

PART V: ELECTRONIC DISSEMINATION OF CORPORATE COMMUNICATIONS – IMPLIED CONSENT

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?

Yes

No

Please give reasons for your views.

We have no comment on this proposal.

- End -