

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.

It is unfair to those competent INED who have sound knowledge and skills to effectively handle the 7th + positions. Situations including operating environment of different issuers differ in scale and complexity and hence, it is not reasonable to pre-determine a particular number of INED posts that a competent candidate should take. It should also be considered that some INEDs with less INED posts but may have many public or other private engagements. He/She will still find insufficient time for the board directorship even if it is the only INED job. It is not a simple arithmetic to pick a number and it would be difficult to measure the time commitment of this category of INED and impose such restriction.

When selecting a person as INED, the Nomination Committee should have already considered all circumstances to evaluate the suitability, including the time commitment, of the person. It is unnecessary to impose a restriction of the number of INED jobs that the person can assume.

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.

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.

It is generally agreed that disclosure covering (i) to (iii) would enhance the transparency in the election process to assure the selection of the right candidate. However, care must be taken to avoid any potential infringement of the Personal Data (Privacy) Ordinance for unnecessary disclosure of candidate's personal details before and after the appointment.

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.

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.

Other comparable jurisdictions such as UK, US, Singapore and Australia have imposed a range from 1 year to 3 years for the cooling off period for professional advisers. Although longer cooling off period might enhance the independence of professional advisers but undue long period such as 3 years will limit the availability of qualified INEDs with suitable background to be appointed as INED. There are also other factors affecting the independence of a candidate to be an INED. Hence, a 2 year cooling period appears to be more reasonable.

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.

A professional accountant such as a partner of the issuer's audit firm has higher standard of professional integrity and ethics. He or she has always exercised independent judgement and his/her independence will not be impeded by assuming an INED role. Same as above, a prolonged period of 3 years will limit the supply of qualified candidates with professional accounting background to fill INED posts. Hence, a cooling off period of 2 years is more reasonable.

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.

Agree that the INEDs may be affected by views or interests of their immediate family members, in particular if these members have conflict of interest with the issuer.

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.

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.

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.

In general "yes" but care should be taken to protect the personal interest and privacy of the child/minors under the age of 18 years, especially infants.

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.

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.

Agree to remove the last sentence for consistency purpose.

However, as a general opinion, INED's duties should include hearing and analysing the views of shareholders, especially the views of minority shareholders in general meetings. INED should propose and give opinion of issues concerning this group of shareholders whilst many of them prefer to attend and give views in general meetings.

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.

This will enhance the communication between the chairman and the INEDs avoiding the possible confrontation of other parties.

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.

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.

- It is environmental friendly to have implied consent from shareholders to receive the electronic copies but accessible, easy and user friendly channel should be established to enable shareholders to request for hardcopies if they wish.

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