

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/cp20171111.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.

Firstly, we are of the view that whether a director can devote sufficient time to a board does not depend entirely on the number of board seats he holds. A person who is extremely busy on his "day-job", if he/she has one, for example, could still find insufficient time for the board directorship even if it is the only one. In this sense, we do not think it is entirely scientific to pick a number and require the issuers to explain.

Secondly, when selecting a person as a board director, the Nomination Committee must have considered the suitability of that person fully, including the time commitment. Therefore, it is sufficient for the Nomination Committee to confirm their belief in the time commitment of the director proposed and subsequently elected in the announcement or circular appointing such director.

Thirdly, this requirement if implemented does not affect one company (that the director joins as his/her seventh directorship) but also all the other companies that he or she serves, so it would be rather cumbersome.

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.

We agree to points (ii) and (iii) but not (i). The reason is that the process of identifying a nominee could be sensitive and the company or the candidate may not wish to disclose it. Besides, what is important here is the quality and contribution of the candidate, how he/she is identified is of lesser importance.

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.

We believe three years is too long and would shrink the pool of available director candidates. That would run counter to the HKEX's other objective of limiting the number of directorship one individual can hold.

Within the definition of "director, partner, principal, or employee" of a professional adviser, there is varying degrees of involvement with the listed entity in question, depending on the capacity of the adviser. To use audit firm as an example, the involvement and the association of an engagement partner would be very different from that of a non engagement partner. To draw the line of 3 years for professional adviser of all capacities is not suitable.

As a counter proposal, we propose a cooling off period of two years. Reference is made to the Code of Ethics for Professional Accountants that is applicable to Hong Kong. Sections 290.137 and 290.139 of the Code suggests a cooling off period of 12 months in similar circumstance. In view of this, if HKEX is to introduce a cooling off period of two years, it would provide a very good balance between keeping professional independence and maintaining a reasonable supply of director candidates.

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 recommend a cooling off period of two years, as per our answer to Q.5

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.

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.

We basically agree but are wary of the situation where for reasons of professional integrity, a spouse's professional undertakings may need to be kept confidential. For example, the spouse of a company's INED may be a partner of a law firm and if the firm receives an engagement from the company, the spouse may not be able to disclose this information to the director out of confidentiality's consideration. We anticipate certain possible practical difficulties in implementing this rule.

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.

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.

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.

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.

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