



羅兵咸永道

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

8th December 2017

Dear Sirs

Re: Consultation Paper on Review of Corporate Governance Code and Related Listing Rules

PricewaterhouseCoopers welcomes the opportunity to respond to this consultation.

We commend The Stock Exchange of Hong Kong Limited on its efforts and are generally supportive of the consultation. As auditors and business advisers to many leading companies, we support different initiatives to drive improved corporate governance in all organisations. We have invested in over a decade of research into the information needs of preparers and investors, which clearly shows an increasing demand both globally and in Hong Kong for greater transparency on how companies are governed and disclosing corporate governance related matters, including but not limited to board operating effectiveness, directors' independence, risk management and internal controls etc.

Whilst regulation alone is unlikely to precipitate fundamental improvements in governance, commitment and challenge by stakeholders will be needed to bring about real improvement. We believe that regulation has a key role to play in establishing the key principles of good corporate governance required to be implemented. These requirements will also help to further align Hong Kong market practices with global trends, solidifying Hong Kong's position as an international financial market.

We have provided our comments and responses with regards to the proposals in the attachment. If you would like to discuss any matters further, please do not hesitate to contact [REDACTED]

[REDACTED] or via email: [REDACTED]

Yours faithfully

[REDACTED]

Enclosure

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 agree with the proposal as it provides further transparency on the considerations given by the Board when proposing whether an individual has the capacity to devote sufficient time for his or her directorship. HKEx could also consider whether further explanation is warranted to set the threshold at 7 directorships given that the Mainland's CSRC limits the number of INED positions for an individual at 5 directorships.

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.

We agree with the proposal, as it helps to promote board diversity and mandates Hong Kong listed companies to focus on this important aspect of corporate governance.

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 with the proposal, as it provides clearer guidelines and greater transparency in the factors considered by the Board in putting forward a director for election, particularly in the areas of perspectives, skills and experience and how he or she would contribute to board diversity.

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.

We agree with the proposal for the reasons set out in Questions 2 and 3 above. Changes to Question 4 are consequential amendments necessary to keep the requirements aligned.

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.

The proposal to extend the cooling off period for professional advisers to three years may have a detrimental impact on the population of suitably-qualified directors who are available to serve on listed companies in Hong Kong. We recommend that HKEx considers carrying out a more indepth study to understand the impact this may have on companies before proceeding with this proposal. The reduction in the director pool population may be compounded by some of the other proposals contained in this Consultation Paper (e.g. more stringent requirements on board diversity, potential limitation on number of directorships etc.) and should be carefully considered.

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.

Please see our response provided for 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.

We agree with the proposal, as it increases alignment with international practice.

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 agree with the proposal. Given there are no comparable provisions in the majority of overseas jurisdictions, we consider the proposal to be a good starting point to encourage the adoption of more stringent practices to ensure better clarity on conflict of interest situations and improve transparency.

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 agree with the proposal, as it increases alignment with international practice.

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.

We agree with the proposal, as it provides greater clarity in defining "immediate family member".

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 existing rules already mandate listed companies to disclose a summary of work performed by the nomination committee during the year, which should have incorporated a reasonable level of information to provide clarity in the nomination process. Also, because such a proposal is not a common practice observed for other markets, there may be limited value in requiring additional mandatory disclosure. In addition, with the proposed changes to CP A5.5 (Question 3 above) now requiring Boards to state in the circular, various additional details about the election of directors (including the process used for identifying the nominee), the proposal being raised in Question 11 may be redundant.

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 agree with the proposal as the intention of the CP is now better reflected.

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 agree with the proposal and we concur with the justifications provided by HKEx. Such change will also help to align Hong Kong's existing practice with other international markets.

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 agree with the proposal as it provides greater clarity for investors for making an informed investment decision.

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 agree with the proposal, as this is considered to be more environmental friendly and electronic communication is now widely accepted by the general public as a form of communication.

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