

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.

We agree that if an INED is holding his seventh or more listed company directorships, the board will have to justify the INED's time allocation so as to ensure that INED will have sufficient time to devote to the board.

Even though INEDs are not involved in the daily operation of a firm, they are expected to carry the same fiduciary duty, skills, and diligence as other board members which is stated clearly in SEHK's Corporate Governance Code. The Companies Ordinance also does not distinguish between the executive directors and NEDs. It is clear that an INED is expected to share the same responsibility as Executive Directors and the role of INED is vital. Therefore, an INED should have sufficient time and resources to fully carry out his/her duties that overboarding should be discouraged in normal circumstances.

By requesting the board to state in the circular why the INED, who is holding his/her seventh listed company directorship, will still have enough time to contribute to the board can help shareholders make a more informed voting at election.

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 that CP A.5.6 should be upgraded to a Rule in the view that board diversity is becoming a more concerning issue in recent years.

Hong Kong should take action to live up to the international standard. The current domination of men on Hong Kong's corporate boards for both executive and non-executive directors should be discouraged.

In fact, a number of countries have already set compulsory gender diversity quota for boards. The Australian Securities Exchange also requires companies to report against the guidelines established by the ASX Corporate Governance Council which includes a requirement for listed entities to establish and disclose a diversity policy (or a policy summary) on an "if not, why not" basis. Therefore, through boosting board diversity, it is believed that the upgrade will be conducive to promoting effective decision-making and 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 that in the circular to shareholders, the Board should set out the process used for identifying the nominee, the perspectives, skills and experience the person is expected to bring to the board and how he would contribute to diversity of the board. This makes election process more transparent to ensure shareholders are well informed before making voting decisions at the meeting.

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 that the disclosure of diversity policy should be made mandatory for the reasons mentioned above.

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.

One of the purposes to extend the cooling off period is to align with the international practices. On one hand, we agree that the current requirement as to cooling off period is too short to ensure the relevant individual is independent from the issuer. On the other hand, we are concerned that the extension to 3 years is too long and hence too restrictive. We propose to extend the cooling off period to 2 years to reduce the potential side-effects. Cooling off period of 2-year is seen to be a proper length that can better ensure the candidate's independence.

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.

For the sake of consistency, we propose the cooling-off period should also be extended to 2 years only.

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 introduction of 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.

An INED should be independent that she/he should not receive any benefits from the Company other than his or her director fee. It is inappropriate to only take into account a proposed INED's current material interests. Prima facie, if an individual has material interests in the issuer in the past one year, his/her independence should be put into question. While UK and Australia require a three-year cooling off period, we regard the proposed one-year cooling off period as more proportionate to ensure independence of INED.

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 that there should be disclosure of INED's cross directorships in the Corporate Governance Report.

Some countries such as UK completely banned the cross directorship as such a relationship is considered to make the two boards too intimately involved with each other and potentially impair the quality of scrutiny. However, banning cross directorship is too stringent. Instead, disclosing cross-directorship would be a comparatively more moderate way that allows Hong Kong to better align with international practice.

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 proposed inclusion of an INED's immediate family members in assessing the directors' independence.

Although independence is a state of mind that it is difficult to test, more objective tests should be devised to avoid conflicts of interests. Reasonably speaking, if the immediate family members of an INED receive gift or financial benefits from the issuer, the independence of the INED should be put into question because it is very likely that the INED has indirect interest. In view of this, it is sensible to introduce family ties as one of the consideration factors when assessing a candidate's independence.

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.

Yes, we agree with the definition of "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 purpose for the proposed amendment to the Mandatory Disclosure Requirement L. d(ii) is to enhance transparency on the issuer's nomination policy. We agree that by requiring an issuer to disclose its nomination policy adopted throughout the year can promote transparency effectively. It helps to enhance the corporate governance by better ensuring board members's diversity and balance of skills.

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 that removing the last sentence can avoid confusion and better reflect the intention of the CP.

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 of requiring INEDs to meet at least annually with the chairman.

An INED's role is to supervise management, participate in the direction of the Company's business and affairs and express opinions objectively on Company issues. As some INEDs may be family members of the controlling shareholders, an exclusive meeting between INEDs and Chairman annually allows INEDs to provide more meaningful feedbacks to the Chairman on the performance of management and ensure the interests of all shareholders, especially minority shareholders, are protected and not sacrificed by controlling shareholders.

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 proposed introduction of requiring the issuer to disclose its dividend policy in the annual policy.

Dividend is an integral part of long term investors' return and a declared dividend policy enables investors to achieve better financial planning and portfolio allocation. Having regular and predictable dividends would likely help a company to attract long term shareholders. Therefore, it is important for companies to disclose a dividend policy. Disclosing a dividend policy improves corporate governance by enhancing transparency of the company. Having a declared policy also demonstrates to investors that the company has a proper capital allocation plan.

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 do not agree that implied consent for electronic dissemination of corporate communication by issues should be allowed.

Although hard copies are outdated and not environmentally friendly, express consent should still be sought from shareholders for receiving communications via electronic means. This is to protect the interest of investors who are not tech-savvy. The UK and Australia do not allow implied consent for electronic corporate communication as well.

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