

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.

The duties and responsibilities of a Non-Executive Director require a deep understanding of the listed entity's business and independent counsel. The ability to provide effective counsel is diminished when one does not have sufficient time to dedicate to any single board. In addition, the more board seats held, the more potential for conflicts of interest in terms of the companies being in similar sectors, direct competitors and clients or customers of one another.

We recommend a limit on the number of board NED seats be applied and where a new, proposed NED is to hold a seventh seat, the board must explain how the new director would be able to devote sufficient time to the 7th board.

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.

welcomes the the upgrading of CP A.5.6 to a rule however the absence of specific wording of the code provision to include a specific requirement for gender diversity as part of the diversity policy will not drive the change needed to ensure Hong Kong does not lag further behind more developed marekts, such as Australia.

As of September 2017, there are only 13.3% women on the boards of HSI companies. As of 30 November 2017, ASX200 boards comprise 26% women. The percentage of women on boards of ASX200 companies and the proportion of women comprising new appointments increased significantly from a low base of 8.3% in 2009. In less than a decade, Australia has more than trippled the number of women on boards leading to greater gender diversity and its numerous benefits to Australian companies. Only through deliberate, specific, and meaningful code provisions has such progress been made.

As such, we recommend the policy follow the Australian ASX Principles and recommend the enhancement of the wording of CP A.5.6 to:

"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 the corporate governance report, with a link to the issuers website to allow access to the full policy."

In addition, we urge HKEX to;

- Require nomination committees to ensure the diversity policy specifically addresses requirements for gender diversity;
- Set measurable objectives to achieve gender diversity;
- Provide recommended best practice and guidelines on diversity policy;
- Limit the tenure of independent directors to nine years to reduce the lack of diversity found in long-term, entrenched boards.

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.

██████████ commends the amendment of CP A5.5 as it will bring greater transparency and rigor on the selection and nomination of directors. However, in the absence of a specific requirement that the identification of the perspectives, skills and experience of the nominee be linked to the diversity policy of the issuer, CP A5.5 can be met without any regard or reference to gender diversity.

We recommend the HKEX:

- add more specification in how the identification process and the nominee would contribute to the diversity of the Board, by reference to the diversity policy of the company;
- Require annual internal evaluation of the performance of each board member (by enhancing CP B.1.9), with external evaluation to be conducted at least every three years; and
- Enable minority shareholders to have a greater voice by requiring separate disclosure of minority shareholder voting for the election of independent directors. Where there is not majority support from minority shareholders, the independent directors is required to stand for re-election at the following AGM

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 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 view.

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 view.

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 not view.

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 view.

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 view.

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 have no view.

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.

In addition, we suggest to the HEX:

- The circular to shareholders include numerical and graphical information to illustrate 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. We suggest a skill matrix as a best practice approach as in Australia

- Annual disclosure of nomination policy should include evaluation of performance and how it has met measurable objectives for achieving greater gender diversity and progress towards achieving those objectives by disclosing the proportion of men and women on the Board, in senior executive positions and across the entire organisation

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 view.

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 view.

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 view.

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 view.

- End -