

## 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.

To mitigate the issue of overboarding, Community Business agrees with the proposed amendment to CP A.5.5 to include an explanation, if the proposed INED will be holding his/her seventh (or more) listed company directorship, why he/she would still be able to devote sufficient time to the board.

Community Business also recommends that a director should be required to seek approval from the board or relevant board committee (such as the Nomination Committee) before accepting any new appointment as a director of another listed company, or any other directorship or position that may require a significant time commitment.

#### 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.

In 2013, Community Business welcomed the introduction of CP A 5.6 by HKEX as a catalyst to improve diversity on Hong Kong's corporate boards. In addition to this, in recent years, there has been a concerted and multi-pronged effort in Hong Kong to increase diversity and the representation of women on the boards of Hong Kong listed companies, including:

- . The launch of the 30% Club with the goal of galvanising Hong Kong's chairpersons and senior business leaders to support bringing more women onto corporate boards.
- . The adoption of a Voluntary Code of Conduct by leading executive search firms to guide them in advising companies on best practices for achieving board diversity
- . The provision of professional training programmes designed to build a pipeline of board directors, including the HKU/Harvey Nash's The Women's Directorship Programme and the FT's Non-Executive Directors Diploma
- . Community Business' annual flagship Women on Boards research compiling a League Table showing the performance of the Hang Seng Index companies

However, all of these measures have had limited effectiveness in driving greater diversity on boards, as measured by gender. According to Community Business' Women on Boards Hong Kong research, the representation of women on Hang Seng Index boards has risen from 9.4% in 2013 to 13.3% in September 2017, an increment of only 3.9% in almost 5 years. The slow progress since 2009 when Community Business started to put a spotlight on this issue, stands in stark contrast to what is happening in other markets such as Australia, Canada, the US, and the UK. In these countries, the representation of women on corporate boards now exceeds 20% with the UK at 27% and targeting 33% by 2020.

Globally, the call for more diverse corporate boards continues to gain momentum. Board diversity is increasingly being recognised as essential to sound decision-making, more informed risk management, and stronger corporate governance. As outlined in the Consultation Paper, this has been reinforced by a growing body of international research linking women on boards and in senior management to better corporate performance. Equally compelling are studies about the risks of group think and lack of diversity of perspectives.

Through our Diversity & Inclusion in Asia Network (DIAN), Responsible Business Network and our various campaigns, Community Business works with hundreds of leading corporates, and has seen significant progress in diversity and inclusion (D&I), especially in the areas of gender, culture, disability, sexual orientation, and gender identity. Yet on Hong Kong corporate boards, there appears to be complacency and a lack of appreciation of the business case for board diversity, especially gender diversity.

For Hong Kong companies to remain competitive, they must embrace D&I at all levels, including boards. They should look to build the best teams of diverse talent and create inclusive workplaces that enable every individual to contribute. The Hong Kong business sector risks falling further behind global counterparts and potentially other markets in Asia which are starting to recognise the economic and social impact of gender diverse boards.

To drive meaningful change, Community Business agrees with the proposal to upgrade CP A 5.6 to a Rule, and recommends that it be enhanced to include specific reference to gender in board diversity policies, with measurable objectives and annual reporting on the company's progress towards meeting these objectives and the gender representation on the board, senior executive level and across the entire organisation. These measures will encourage greater transparency and accountability and therefore are more likely to improve the effectiveness of a company's diversity policy in achieving the outcomes the board has set.

Reference can be made to the corporate governance principles of leading markets such as that of the Australian ASX.

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.

Community Business agrees with the proposal to amend CP A.5.5 with the aim to improve the rigour and transparency of the process and decision-making in the appointment of directors, which we feel is important for strong corporate governance and to instill investor confidence.

Companies should have a formal process in place to appoint and re-appoint directors, driven by a Nomination Committee. Listed companies are required to review the structure, size and composition of their board on a regular basis, and as part of this process, the Nomination Committee determines the balance of skills, knowledge, experience, independence and diversity to oversee the company's key strategies, challenges and risk management efforts, now and in the future. The company's board diversity policy and its stated diversity objectives should be referenced. A skills matrix is a useful framework for this exercise, and its content or a summary can be disclosed in the company's annual report. As a measure of good governance, the skills matrix should be reviewed on an annual basis to ensure that it remains relevant while the business itself or the environment in which it operates changes.

On a regular basis, the Nomination Committee should profile and evaluate the skills, competencies, and other attributes of the currently serving directors, identify any gaps, and define the most appropriate means to identify and recruit board candidates to fill these gaps. To identify a diverse slate of qualified board candidates, companies should consider engaging an executive search firm that specialises in board searches.

Community Business recommends that the following should be included in the circular to shareholders accompanying the resolution to elect a new director:

- . The process for identifying, evaluating, and selecting the nominee, including whether an external party such as an executive search firm was involved
- . The perspective, skills, experience, and other characteristics that the nominee is expected to bring to the board.
- . How the nominee complements the existing board and contributes to its diversity, with reference to the company's board diversity policy.

For effective board performance, Community Business recommends that CP B.1.9 to be enhanced to require an annual internal performance evaluation of each board member, with an external board evaluation conducted by an independent party at least every three years.

In addition, Community Business has a concern about the effective participation by minority shareholders in the election of independent directors in listed companies with a majority controlling shareholder. Without a transparent process to enable the participation and influence of minority shareholders on an independent director's election or retention, the ability of the director to effectively perform their oversight role would be significantly undermined.

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.

Community Business agrees with the proposal to amend Mandatory Disclosure Requirement L.(D)(ii) to reflect the upgrade of CP A.5.6 to a Rule (Rule 13.92).

## 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.

Community Business has no comment on this proposal.

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.

Community Business has no comment on this proposal.

**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.

Community Business has no comment on this proposal. Community Business has no comment on this proposal.

**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.

Community Business has no comment on this proposal.



**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.

Community Business has no comment on this proposal.

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.

Community Business has no comment on this proposal.

**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.

Community Business agrees with the 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.

With heightened focus on corporate governance and board diversity of listed companies, Nomination Committees play a critical role in driving the diversity of the board and in ensuring a transparent and robust process for director recruitment, selection, and succession planning, ensuring alignment with company's strategic goals. The Nomination Committee itself should be diverse and of appropriate size to discharge its mandate effectively, and to ensure that it minimises unconscious bias in its work.

As part of good corporate governance and a recommended best practice in CP D.2.3, Community Business proposes a clear terms of reference for the Nomination Committee, which includes the following (not an exhaustive list):

- determining board size and composition
- developing a skills matrix defining the skills, competencies, experience, personal attributes, and diversity required for the board that aligns with business needs - and on a regular basis, reviewing this as business needs change
- formulating a rigorous process for recruiting, selecting and appointing new directors, including the engagement of external parties such as search firms
- on a regular basis, assessment of the independence of each non-executive director
- succession planning of directors, the CEO and other senior executives
- formulating a process to review the performance of individual directors and effectiveness of the board as a whole
- induction of new directors and ongoing professional development so that directors develop and maintain the skills and knowledge to perform their roles effectively
- taking ownership of the board diversity policy, setting measurable objectives for diversity parameters such as gender, and reporting on how the board is progressing against these objectives

Some of the above may be the responsibility of other board committees. If the board does not have a Nomination Committee, it should explain in its annual report how it performs these duties.

On an annual basis, to increase transparency and accountability, the issuer should be required to provide disclosures on its performance with respect to board nominations and board diversity, including gender. Additional disclosures on gender representation at senior management level and throughout the organisation, along with any targets and its progress against these targets, should be included.

Reference can be made to the corporate governance principles of leading markets such as that of the Australian ASX.

### **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.

Community Business has no comment on this proposal.

#### **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.

Community Business has no comment on this proposal.

**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.

Community Business has no comment on this proposal.

**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.

Community Business believes that the Rules should be amended to allow shareholders' consent to be implied for electronic dissemination of corporate communications by issuers. Our rationale for this is that electronic communication is more much efficient than hard copy dissemination and reduces the negative impact on the environment.

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