

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 have no further comment.

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.

Please see Appendix 1.

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.

Freshfields agrees with the amendment to bring more transparency to the appointment of directors and further suggests that HKEx:

Be more specific on how the identification process and the nominee would contribute to the diversity of the Board by reference to the diversity policy of the issuer.

Require annual internal evaluation of the performance of each board member (by enhancing CP B.1.9), with external evaluation to be conducted every three years.

Enable effective participation by minority shareholders in the election of independent directors in listed companies with a majority controlling shareholder by requiring separate disclosure of minority shareholder voting for the election of independent directors. Where there is not majority support from minority shareholders, independent directors shall be 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 have no further comment.

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 further comment.

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 further comment.

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 no further comment.

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 further comment.

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 further comment.

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 further comment.

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.

Freshfields 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.

The circular to shareholders should 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.

Annual disclosure of the nomination policy should include performance evaluation and how it has met measurable objectives for achieving gender diversity and progress towards achieving those objectives by disclosing gender representation in the board, in senior executive positions and also across the whole 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 further comment.

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 further comment.

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 further comment.

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 further comment.

- End -

Appendix 1

Response to Question 2

The Consultation Paper cites research and studies indicating that board diversity, and in particular gender diversity within the board, is an important factor that promotes effective decision-making, enhances corporate governance and improves financial performance. However, the representation of women on Hang Seng Index boards currently stands at a mere 13.3%, lagging behind other major markets such as the UK, the US and Australia. All have representation of women on corporate boards exceeding 20%.

While Freshfields agrees that CP A.5.6. ought to be upgraded to a rule, we believe that the opportunity should be taken to encourage the market to disclose separate gender diversity objectives, and also to recommend the adoption by listed companies of voluntary targets for gender diversity as best practice. Such targets should be made public.

Women are half of the global population. For that reason, gender cannot be regarded merely as being one aspect of diversity within a list of many factors, all to be given equal weighting. Achieving genuine gender balance ought to be a paramount consideration. Issuers should therefore be required to set measurable objectives (which may include voluntary targets) to achieve gender diversity on the board, board committees and in senior management positions, and their intended timing for fulfilling those objectives. Issuers should also be required to report annually on the progress they have made in achieving their objectives. To be effective in achieving the stated goal of enhancing better gender balance, and to enable due accountability, such objectives should be issued separately from objectives in relation to general diversity matters.

We believe that this is a necessary step to improve the representation of women on boards in Hong Kong and to help to bring Hong Kong closer to the progress made in other major markets.

Accordingly, Freshfields proposes adoption of the following wording as new Listing Rule 13.92:

An issuer should:

(1) have a diversity policy which includes requirements for its board of directors (or the nomination committee) to set measureable objectives for achieving diversity and the proposed timing for achieving those objectives, and to assess annually both the objectives and the issuer's progress in achieving them. The policy should separately address gender diversity on the board, board committees and in senior management positions, to which separate measureable objectives should be applied (distinct from objectives relating to other diversity criteria), and which may include voluntary targets;

(2) disclose that policy (or a summary of it) in the corporate governance report and how the board (or the nomination committee) have considered and applied the policy in the nomination and appointment of directors; and

(3) disclose in the corporate governance report the measurable objectives for achieving gender diversity that the board (or the nomination committee) has set and its progress towards achieving them, including in particular disclosure of the respective proportions of men and women on the board, board committees and in senior management positions.

An issuer is encouraged to have voluntary targets for gender diversity and the timing for achieving those targets, and to disclose the targets publically in the corporate governance report. (It is proposed that this recommended best practice is directly associated with new Rule 13.92 to give it greater prominence and weight. However, in keeping with the normal organisation of the Listing Rules, it could also be housed in Appendix 14.)