

## 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.

Yes, a tenure of six years without explanation appears appropriate. Moreover, instead of the board's sole explanation, we suggest that the company should be encouraged to quote the INED's explanation with specific reasons from the INED's own perspective and add the board's comments.

#### 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.

Yes, we agree.

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.

Yes. According Rule 2.13 of the Main Board Listing Rules, the Board should disclose any relevant material unfavourable information in particular. It is suggested that the Board also expressly discloses in the circular that it has requested the INED to state any circumstances which may materially affect the INED's discharge of duties as INED of the company, and the response of the INED.

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.

Yes, we agree. This is a positive step forward.

## 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 consider that a period of 3 years would be appropriate. Such cooling-off period seems right having regard to the "majority of overseas jurisdictions" and "international practice", as well as the local culture, the policy, the market averages and so on. It should be noted that the cooling off period for retired senior civil servants joining the private sector relates to rather different issues.

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.

Yes, we agree. There might be justifications that the former partner be allowed to be a member of the issuer's audit committee within 3 years, especially where the former partner worked in a very large accountancy firm (or in its overseas office) where he or she has had no previous dealing with the issuer.

**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.

Yes. A person who has had material interests in the issuer's principal business activities in the recent year may be regarded as having potentially significant conflicts with the commercial interests of, or connections with parties potentially adverse to, the issuer, which might impact his/her neutral judgment.

**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.

Yes, we agree. In view of the enforcement statistics of the connected transactions from 1 January 2015 to 30 June 2017, we believe a more vigorous INED regime should be considered. A gradual step towards this goal is the disclosure of INED's cross-directorships or having significant links with other directors through involvements in other companies or bodies.

**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.

Yes. Family ties come from nature and will be a concern to the majority of people, especially with the influence of the traditional family values from Confucianism in Chinese culture (and that is why we believe the Chinese extend the nominal scope of the family ties to primal social bondings covering sibling relationships, parents-in-law relationships, etc.) As such, we suggest that Hong Kong should also consider the influence of this kind of traditional culture in the future.

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. In the future this definition may be extended as suggested in our answer to Question 9.

**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.

We agree even though the contents of many issuers' required disclosure are likely going to be a verbatim repeat of Code Principle A.3. Meanwhile, the implementation of the stated nomination policy during the year should still be disclosed, to demonstrate how the people who are nominated are selected and the reasons of nomination, preferably referring to named appointees, like a real work report.

### **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.

Yes. While we care for corporate governance in Hong Kong, we note in practice that this CP A.6.7 might have resulted in a biased pursuit after general meetings' attendance rate, as opposed to taking real interest in the affairs of the issuer. We agree that an INED should develop a balanced understanding of the views of shareholders. However, this can be achieved through diverse efficient ways, making the best use of the INED's time.

#### **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 do not agree because we believe the current article A.2.7 has its international and universal rationale as mentioned in the consultation paper. It should also be noted that the modern board's chairman (irrespective of whether he or she is the chief executive at the same time) should consider both the clear voices of the executive team on the one hand and the clear voices of the INEDs on the other, in order to obtain a "360 degree" perspective. This universal rationale ought not be affected by the fact that some chairmen also take up the roles of chief executives in Hong Kong.

**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 as this is the growing international norm. The dividend policy correlates with the true value of the issuer's securities and ought to be squarely disclosed, or properly explained why it is not disclosed.

**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.

Yes. Enough trees have been cut for sending those paper notices in Hong Kong. Following the rapid developments of electronic technology, people are getting more familiar with the electronic devices and are becoming more willing to accept that get information through online technology is the norm (while they can still get it on paper if they so elect). Electronic dissemination of corporate communications has been widely accepted by the majority of the population now who are familiar with and experienced in using e-devices.

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