



香港董事學會  
The Hong Kong Institute of Directors  
FOUNDED 1997



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8 December 2017

Hong Kong Exchanges and Clearing Limited  
12/F, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

Dear Sirs

**HKIoD's Response to HKEX Consultation Paper on  
Review of the Corporate Governance Code and Related  
Listing Rules**

The Hong Kong Institute of Directors ("HKIoD") is pleased to forward our response to the captioned paper.

HKIoD is Hong Kong's premier body representing directors to foster the long-term success of companies through advocacy and standards-setting in corporate governance and professional development for directors. We are committed to contributing towards the formulation of public policies that are conducive to the advancement of Hong Kong's international status.

In developing the response, we have consulted our members and organised focused discussions.

Should you require further information regarding our response, please do not hesitate to contact me on tel no. [REDACTED]

With best regards

Yours sincerely  
The Hong Kong Institute of Directors

[REDACTED]  
Dr Carlye Tsui  
Chief Executive Officer

cc: Mr Henry Lai, Chairman of Council, HKIoD & Chairman,  
Corporate Governance Policies Committee



Issued on: 8 December 2017

**The Exchange's Consultation Paper  
on  
Review of the Corporate Governance Code  
and Related Listing Rules (November 2017)**

In relation to the captioned Consultation Paper, The Hong Kong Institute of Directors presents its views and comments.

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Our responses to the consultation questions are as follows:-

**INDEPENDENT NON-EXECUTIVE DIRECTORS**

**Overboarding and INED's time commitment**

Question 1 Do you agree with our proposed amendment to CP A.5.5 as described in paragraph 36?

HKIoD response:

- AGREE.
- The proposal is to revise CP A.5.5 so that in addition to the CP requiring the board to state in the circular to shareholders accompanying the resolution to elect the INED their reasons for electing him and why they believe the person to be independent, it should also explain, if the INED will be holding his seventh (or more) listed company directorship, why the person would still be able to devote sufficient time to the board.
  - The task of the nomination committee is to identify appropriate persons to serve on the issuer's board and to determine if such persons should warrant a re-nomination to serve when the term expires. Among other factors, the ability of a director to devote sufficient time to attend to the issuer's board matters is a key consideration. The nomination committee should regularly review the time required from a director to perform his responsibilities to the issuer, and whether the individual director is meeting that requirement.
  - The "seventh (or more)" threshold may have found its impetus from the Institutional Shareholder Services Inc.'s tendency of not recommending a vote for election/re-election of a director when the candidate sits on more than six



public company boards. See paragraph 33 and footnote 12. The threshold, however, should only operate as a “soft cap”.

- The emphasis should be on whether a director (or candidate) has made an honest assessment as to the ability to devote sufficient time, and whether the issuer has made an honest determination whether the INED is meeting that time commitment. And if the emphasis should be on a qualitative assessment of time commitment expected and time commitment satisfied, and to have that information conveyed to shareholders and investors, there may be a reason to lower the threshold still (e.g., to five or even lower).
  - When a person having directorships at (or beyond) the threshold number of issuers decides to take up another appointment, those issuers may be “diluted” of the person’s time and attention mid-stream. Some thoughts may need to be given on whether it is practical or necessary for these issuers to timely inform their shareholders and investors in such an instance.
- The proposal in the Consultation Paper may be focusing too much on “listed company directorship”.
  - We note, however, that existing CP A.6.6 requires each director to disclose to the issuer at the time of appointment, and in a timely manner for any change, the number and nature of offices held in public companies or organisations and other significant commitments.

## Board diversity

Question 2 Do you agree with our proposals to upgrade CP A.5.6 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?

HKIoD response:

- AGREE.
- Board diversity is about building the right board, recruiting the right individuals to fill board roles. It is about composing and maintaining a board with the right mix of skill sets that will increase board effectiveness and bring long-term shareholder value. To require issuers to have and to explain a diversity policy and more generally the recruitment process should give shareholders and investors useful information. Board diversity, however, must be understood in the proper context of a board’s role.
  - The key role of a board is to set company strategy and objectives on the one hand, and to oversee and monitor the performance of management in its



implementation. The nomination committee has its duty to regularly assess the structure, size and composition of the board as to be consistent with and able to carry out the corporate strategy. This entails assessing the skills and experiences of the current board members, and to expand skill sets to overcome weakness or to fill missing gaps if necessary. This would also entail an assessment of whether certain elements of diversity, be it age, gender, ethnicity or other attributes, could enhance boardroom discussions and decision-making but were missing.

Question 3 Do you agree with our proposal to amend CP A.5.5 that it requires 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.

HKIoD response:

- As to (i), AGREE.
  - See also our response to Question 2 and 11
- As to (ii), AGREE.
  - See also our response to Question 2.
- As to (iii), AGREE.
  - See also our response to Question 2.

Question 4 Do you agree with our proposal to amend Mandatory Disclosure Requirement L.(d)(ii) as described in paragraph 56 [and paragraph 52]?

HKIoD response:

- AGREE.
- The proposal is to upgrade CP A.5.6 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. See also our response to Question 2.

### **Factors affecting INED's independence**

#### **- Cooling off periods for former professional advisers**



Question 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?

HKIoD response:

- We have reservations.
- A three-year cooling off period may in some cases be desirable to ensure that a candidate is and is perceived as being independent. The additional two-year cooling off period, however, should need only be implemented by way of a CP subject to “comply or explain”. Flexibility is one reason, and the explanation put out by the issuer in such an instance can possibly be more revealing and useful to shareholders and investors than a mechanical compliance to a three-year cooling off period.
  - Supply of quality INEDs: To lengthen the cooling off period may result in a need for more people willing and able to become INEDs. It is essential that we find individuals who have the skills, knowledge and qualities to meet corporate governance demands of today to fill INED positions, not just to make up the numbers. HKIoD maintains a roster of members who have positively indicated their willingness and who have conscientiously equipped themselves to become INEDs.

Question 6 Do you agree with our proposal to revise CP.3.2 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?

HKIoD response:

- AGREE
- The additional two-year cooling off period should need only be implemented by way of a CP subject to “comply or explain”.

### **Factors affecting INED’s independence**

#### **- Cooling off period in respect of material interests in business activities**

Question 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?

HKIoD response:

- We have reservations.



- We support the introduction of a cooling off period in respect of material interests in business activities, but we do not support the one-year cooling off period as proposed.
  - Material interests in the issuer’s principal business can compromise a candidate’s independence as much as – perhaps far more than – an engagement to render professional services. As such, the cooling off period should be on par with that for former professional advisers. The cooling off period (three years) should only need to be implemented by way of a CP subject to “comply or explain”. Alternatively, we will also support a Rule requirement of one-year and the additional two years be implemented by way of a CP.

### **Factors affecting INED’s independence**

#### **- Cross-directorships or significant links with other directors**

Question 8 Do you agree with our proposal to introduce a new RBP A.3.3 to recommend disclosure of INED’s cross-directorships or having significant links with other directors through involvements in other companies or bodies in the Corporate Governance Report?

HKIoD response:

- AGREE.
- The holding of cross-directorships or having significant links with other directors through involvements in other companies or bodies can indeed compromise a director’s independence.

### **Factors affecting INED’s independence**

#### **- Family ties**

Question 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?

HKIoD response:

- AGREE
- We support the proposal, but we think it can go further than a Note to merely “encourage” the inclusion of family ties in the assessment of the candidate’s independence. The independence of a director can indeed be affected by the connection with the issuer which the director’s immediate family members may have. Let such be explained to shareholders and investors.



Question 10 Do you agree with our proposal to adopt the same definition for “immediate family member” as Rule 14A.12(1)(a) as set out in paragraph 81?

HKIoD response:

- We have reservations.
- As stated in paragraph 81, Rule 14A.12(1)(a) defines an “immediate family member” as “his spouse, his (or his spouse’s) child, natural or adopted, under the age of 18 years”.
  - The Exchange may want to explain why parents, siblings and cousins are not and need not be covered.

## **NOMINATION POLICY**

Question 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?

HKIoD response:

- AGREE
- Although there may be no strict and direct requirement to disclose the nomination policy in other jurisdictions, we surmise there will be information disclosed per other rule requirements that allow shareholders and investors to assess (indirectly, as the case may be) whether the listed entity has indeed built and maintained a board that has a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer’s business. The proposal is not onerous on issuers. How do Hong Kong issuers approach this disclosure requirement and how well do they provide useful information that is not boiler plate will be another debate.

## **DIRECTORS’ ATTENDANCE AT MEETINGS**

### **Directors’ attendance at general meetings**

Question 12 Do you agree with our proposal to amend CP A.6.7 by removing the last sentence of the current wording.

HKIoD response:

- We have reservations.





- The proposal is to remove the sentence “[t]hey should also attend general meetings and develop a balanced understanding of the views of shareholders.” See paragraph 94. The Exchange’s enforcement policy is probably not to consider any directors’ absence from a general meeting – absent other factors – a deviation from the CP. See paragraph 95. The reason for the proposal is therefore to “better reflect the intention” of the CP, to avoid the effect of too strict an interpretation such that any directors’ absence from a general meeting would result in a deviation from the CP.
  - The CP’s purpose, if not the intention, must be to encourage directors to attend general meetings. Instead of removing the sentence, the Exchange can consider wordings like “[directors] should *strive to* attend general meetings ...”

### **Chairman’s annual meetings with INEDs**

Question 13 Do you agree with our proposal to revise CP A.2.7 to state that INEDs should meet at least annually with the chairman?

HKIoD response:

- DISAGREE.
- CPA.2.7 currently states that that chairman should at least annually hold meetings with the NEDs (including INEDs) without the executive directors present. The proposal is to revise CP A.2.7 to state that INEDs should meet at least annually with the chairman even if the chairman is not an INED.
  - We support the notion of INEDs (and NEDs) meeting with the chairman, but disagree with the proposal as stated.
  - CP A.2.7 in its current form is better for purpose of encouraging NEDs (especially INEDs) to speak out concerns more freely in settings that are not focusing on or being driven by specific compliance agenda. Issuers who find no need to hold such separate meetings can have that explained in disclosure to meet the CP’s requirement.
  - Paragraph 106 suggests that many NEDs are family members of the controlling shareholders, and that a meeting of INEDs including NEDs may not serve the purpose of meeting without management. Not all NEDs are family members of controlling shareholders. And if an NED is so closely connected with management, that NED can “skip” the meeting and have that fact explained in disclosure to meet the CP’s requirement.

### **DIVIDEND POLICY**





Question 14 Do you agree with our proposal to introduce CP E.1.5 requiring the issuer to disclose its dividend policy in the annual report?

HKIoD response:

- AGREE
- The disclosure of dividend policy would allow shareholders and investors to have better basis to make an investment decision. Even a policy that bents on not favouring dividends is not necessarily “bad”, so long as the issuer’s board has made its rationale known to investors.

## **ELECTRONIC DISSEMINATION OF CORPORATE COMMUNICATIONS - IMPLIED CONSENT**

Question 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?

HKIoD response:

- AGREE
- We support the proposal, but we can see valid arguments to take half a step back to effectuate an express consent regime before transitioning fully to implied consent. We also note that an amendment to the Hong Kong company law will be a prerequisite.

-END-