

## 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.

AustCham is supportive of the proposal to ensure all INEDS would be able to devote sufficient time to their board commitments and responsibilities. Being a director of a listed company, whether it is executive, non-executive or independent non-executive, requires certain time commitments, duties and responsibilities. It is believed that the more board seats held, the less time available for a director to discharge his or her duties effectively and to provide adequate oversight. In addition, as the number of board positions increase, so too does the potential for conflicts of interest in similar sectors or direct competitors.

AustCham recommends setting a limit on the number of board NED seats held and a sufficient justification is required when a proposed NED is to hold a seventh seat.

#### 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.

Australia has tripled the number of women on boards in ASX200 from 8.3% in 2009 to 26% in 2017. The significant increase in proportion of women getting on boards leads to a greater gender diversity and brings countless benefits to Australian companies, including measurable improved performance outcomes.

AustCham welcomes the upgrade of CP A.5.6 to a rule requiring issuers to have a diversity policy and to disclose the policy or a summary of it in their corporate governance reports, to ensure Hong Kong does not lag further behind other developed markets such as Australia.

Additionally, we urge the HKEX to:

- future enhance these requirements by requiring nomination committees to put in place a specific policy regarding gender diversity;
- Set measurable objectives to achieve gender diversity;
- Provide recommended best practise and guidelines on diversity policy;
- Limit the tenure of independent directors to nine years to reduce the lack of diversity 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.

AustCham support the amendment as it will bring greater transparency to the appointment of directors. We also suggest the HKEX:

- Introduces 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
- We would like to see minority shareholders have a greater voice by requiring separate disclosure of minority shareholder voting for the election of independent directors, and where there is not majority support from minority shareholders, that the independent director 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.

AustCham agrees with the proposal to amend Mandatory Disclosure Requirement L.(d)(ii) to reflect the upgrade of CP A.5.6 to a Rule which helps promoting diversity amongst boards.

**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.

AustCham supports the proposal to extend the cooling off period for professional advisers from one year to three years to further enhance INED's independence. Suggestions that this provision could reduce the pool of available INEDs ignores the vast pool of untapped female and international talent who are board ready and would make an excellent contribution on Hong Kong boards.

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, this would provide an additional safeguard and ensure independence.



**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.

AustCham has no comment on this.

**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.

AustCham supports the proposal to introduce a new RBP A.3.3 to ensure the transparency of cross directorship and that they should also be disclosed in the company's Corporate Governance Report.

**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.

AustCham believes that greater transparency of INED family ties is critical. We believe this definition should be widened to include dependents as well as immediate family members..

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.

AustCham suggested that to include dependents (e.g. dependent parent) in the definition of "immediate family member" in order to further enhance the disclosure of INED links. This should also include de facto partner (in addition to spouse)

**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.

AustCham strongly supports the amendment to act as a starting point amongst the reviewed jurisdictions (UK, US, Australia, Singapore and Mainland China) Additionally, AustCham suggests to the HKEX:

- 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. It is suggested that a skill matrix as a best practise approach;
- Annual disclosure of nomination policy should include evaluation of performance and how it has met measurable objectives for achieving gender diversity and progress towards achieving those objectives by disclosing proportions of men and women on the Board, in senior executive positions and 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.

AustCham agrees to the amendment of removing only the first part of the last sentence in relation to attendance at general meetings but we need to be aware of the latter part which calls for a balanced understanding of the views of shareholders, which is very important to both INEDs and NEDs.

#### **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.

AustCham fully supports the proposal to require INEDs to meet with the Chairman annually even if the Chairman is not an INED to facilitate a continued communication and exchange of views regarding the company.



**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.

The dividend policy is very important to analysts and investors in informing their investment decisions.

**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.

AustCham supports a more environmental friendly approach for corporate communication but is aware that Hong Kong Company Ordinance does not permit implied consent and a number of the Main Board and GEM issuers are Hong Kong incorporated. In spite of that, it is still possible to consider amending the Rule when there is sufficient clarity provided on when implied consent can be adopted with due consideration on the legal environment where the issuers incorporated (e.g. Hong Kong incorporated issuers should not adopt it as an example).

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