

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.

We believe that the trigger of seven directorships for requiring an explanation to shareholders is too high. Directors need to be able to devote sufficient time and energy to be effective and fulfill their duty of care. We believe that in ordinary circumstances, individuals who serve on the boards of even five listed companies will be spreading themselves too thin. We therefore propose that each instance of "seventh" in the proposed amendment be changed to "fifth." We also believe that a full-time CEO of a company ordinarily does not have sufficient time to also serve on the board of more than one other company. We therefore also propose that the board should be required to explain why a director who is a full-time CEO of another company and sits on the board of more than one other company will still be able to devote sufficient time to his/her duties.

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.

We support the Consultation Paper's objective to promote diversity on boards and in the workplace, including but not limited to the dimensions of "gender, age, cultural and educational background, or professional experience" Accordingly, we agree with the proposal to upgrade CP A. 5.6 (on a "comply or explain" basis) to a Rule (Rule 13.92).

Specifically with respect to gender diversity, we believe the Rule should be strengthened to require the disclosed diversity policy to include the stated goal of achieving at least 30% female representation on the board, and include a time-bound plan for reaching that objective. HKEx should also require that at least one of a board's female independent directors sits on the Nominating Committee so that this trend might continue. In our experience, general statements in favor of gender diversity are at best a vague indication of a company's intentions with respect to board composition. A 2017 KPMG review of ESG reporting by HKEx listed companies found that where limited information besides high-level commitment and policy statements is provided, investors have a limited base to assess the company. One of the suggestions the report makes is that issuers have targets and follow-up actions.

As the Consultation Paper points out, improvement in the statistics relating to gender diversity on boards of HKEx listed companies has been slow (10.3% in May 2012 vs. 12.2% in 2016). Hong Kong lags most other major markets on this metric. Some markets, including Norway, Italy, France and Germany have instituted mandatory quotas for gender diversity on boards. The recently-released Kotak Committee report recommends that the requirement for at least one female director on the board of every Indian listed company be amended to require that each board include at least one independent female member.

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.

In our experience, the presentation of a skills/expertise/competencies matrix creates a valuable framework for dialogue inside the company and among stakeholders around what skills should be present on the board, and whether the current mix of directors adequately provides them. A disciplined, permanent board refreshment and director recruitment process that considers existing and desired skill mix (including diversity) and maintenance of an adequate truly independent component on key committees and the board should be communicated to shareholders with each new director election.

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.

Please refer to comments on question 2. While we agree that this CP should be upgraded to a Rule, we think the Rule's requirements regarding the policy's gender diversity component should be strengthened.

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.

While we agree that the cooling off period should be increased to three-years from one, we believe it should be made clear that such period is a necessary, but not sufficient condition for true independence. Every boards' Nomination Committee, or similar, should disclose its definition of "independence" for board members. Deviation from standard definitions of "independence", whether in a national code or otherwise, should be noted and qualified. As the OECD Principles of Corporate Governance state, "It should be incumbent on the board to set out the reasons why a member of the board can be considered independent." This is especially important for former professional advisers. The board should declare who they consider to be independent and the criterion for this judgement.

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 agree with the proposal is a step in the right direction, but believe that in the Hong Kong context it is desirable for the three-year cooling off period to be mandatory. Hong Kong is a market with a ready supply of quality audit and accounting professionals, which alleviates any need for including any members of the audit committee who may not be, or may not be seen to be, both qualified and without bias deriving from their previous involvement in the company's audits.

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.

If an INED who has had material interests in the issuer's principal business activities in the past year is proposed, the board should set out the reasons why such a member can be considered independent. Additionally, any such material interests should be disclosed in detail in the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting when the INED is proposed.

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.

An INED's cross-directorships are sufficiently material to the voting decisions of shareholders that their full disclosure should be on at least a "comply or explain", rather than a voluntary basis. Should an INED's links through involvements in other companies or bodies raise any questions of conflicts of interest, the company should disclose the reasons why that member can be considered independent.

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. The independence of a director may be affected by the interests and affiliations of his/her 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.

See above 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.

See also our response to question 3.

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 see no reason to remove the last sentence. As fiduciaries, directors should indeed ordinarily attend general meetings, and shareholders are entitled to an explanation when they don't. If there is concern that certain shareholder meeting are pro forma and therefore the directors' presence would be superfluous, the sentence can be qualified to refer only to AGMs and other meetings at which the business of the company is discussed.

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.

It seems obvious to us that a director's duty of care requires that he/she have periodic meetings with the chair.

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 with the proposal to introduce the requirement of a dividend policy on a "comply or explain" basis. However, given the other major markets, including the US, UK and China require disclosure of a formal dividend policy, we believe Hong Kong should make this a mandatory rule.

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.

So long as the company provides contact information so that those shareholders who desire a hard copy of a particular communication can receive them, we have no objection to implied consent for electronic dissemination.

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