



December 14, 2017

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

RE: [Consultation Paper on Review of the Corporate Governance Code and Related Listing Rules](#)

Dear Sirs/Madams,

Please find the Thirty Percent Coalition's ("the Coalition") comments on Part 1, Questions 2-4 of the Hong Kong Exchange's Consultation Paper on Review of the Corporate Governance Code and Related Listing rules.

The Coalition is a U.S. based organization representing more than 90 members committed to increasing gender diversity on corporate boards of portfolio companies in which its members invest. The Thirty Percent Coalition's membership base comprises institutional investors, including large pension funds, representing over \$3.2 trillion assets under management (AUM).

The [Thirty Percent Coalition's membership](#) base includes institutional investors such as the California State Teachers Retirement System, UAW Retiree Medical Benefits Trust, Walden Asset Management, pension funds of New York City and New York State, the Connecticut Retirement Plans, and other city and state pension funds as well as prominent mutual funds in the U.S. The Coalition's members work collaboratively to promote the nomination of women to Boards of Directors and focuses, in part, on companies with limited diversity on their Boards. We believe that diversity, inclusive of gender, race, and ethnicity is a critical attribute of a well-functioning board and a measure of sound corporate governance. As long-term institutional investors, and collectively as members of the Thirty Percent Coalition, we have a deep interest in board quality, board refreshment, effectiveness and long-term sustainable value creation.

The Thirty Percent Coalition advocates for board diversity as sound corporate governance; it is especially focused on gender diversity. We are writing today to urge you to amend the proposed change to require increased gender diversity on the boards of listed Hong Kong Exchange companies.

We are sending this letter and comments in the Questionnaire provided on behalf of the Thirty Percent Coalition and the Investors who are active proponents of board diversity. Please see attachment with responses to Board Diversity Question s#2 #3 Board Nomination Process and #4 Improved Mandatory Disclosure Requirements.

Thank you for your attention to this request. To facilitate a discussion in scheduling a time for a call, please contact Charlotte Laurent-Ottomane, the Executive Director of the Coalition to arrange. Charlotte can be reached via email at [REDACTED] or by telephone at [REDACTED].

Sincerely,

Thirty Percent Coalition Institutional Investor Committee Chairs

[REDACTED]

Mary Hartman Morris
California State Teachers' Retirement System

[REDACTED]

Timothy Smith
Walden Asset Management

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.

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 sit 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 from the SEBI 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

- End -