

Part B Consultation Questions

1. Directors' duties and time commitments

Question 2: Do you agree with our proposed change to Rule 3.08 to clarify the responsibilities the Exchange expects of directors?

Agree

Question 3: Do you agree with our proposed addition of the Note to Rule 3.08 referring to the guidance issued by the Companies Registry and HKIOD?

Agree

Question 4: Do you agree to include a new duty (CP A.5.2(e)) in the nomination committee's written terms of reference that it should regularly review the time required from a director to perform his responsibilities to the issuer, and whether he is meeting that requirement?

Unable to agree until Exchange gives guidance on how nom com can perform their duties. Can they simply look at the board meeting attendance record?

Question 5: Do you agree to include a new duty (CP A.5.2(f)) in the nomination committee's written terms of reference that it should review NEDs' annual confirmation that they have spent sufficient time on the issuer's business? Please give reasons for our views.

Disagree.

- (i) NEDs are not full time employees. It will be unfair to both the issuer and the NEDs to determine "appropriate" time commitment level as the time required for different matters varies. By setting a fixed time commitment, there will be a requirement to review the level of compensation to those NEDs and could impede on the independence of INEDs.
- (ii) Enforcing the set time commitment has **practical deficiency**. The Exchange should be more concerned about the quality rather than the quantity of time spent by NEDs. (also see (v)) The disclosure of "meetings attended against held" is a useful indicator to determine if a director has indeed committed adequate time to the issuer by requiring them to disclose written explanation for their absence. This will force the director himself to seriously determine if he has the capacity to take up an additional appointment. This is already required under CP A.5.3 which states that every director should ensure that he can give sufficient time and attention to the issuer's affairs and should not accept an appointment if he cannot. This was also mentioned in the consultation paper paragraph 43 last sentence – "For instance, if a director rarely attends any board or board committee meetings or is unprepared for most of these meetings, it will call into question whether he is spending sufficient time on the issuer's business."
- (iii) In paragraph 37 of the paper, it was commented that in a number of disciplinary cases, lack of attention given by INEDs to their duties was a contributing factor to the non-compliance with Rules by the issuer. We would like Stock Exchange to disclose the number of other positions/directorship these INEDs were holding during the period under review in those disciplinary cases
- (iv) Exchange must realise that "sufficient" will be interpreted in numerous different ways depending on the nature of the business, size of the business, number of locations/subsidiaries of the issuer, qualification of the individuals and so on. Exchange cannot impose one set of rules in this regards and sufficiency must be left to be

determined by the individual issuers after considering a wide range of factors specific to the situation of the issuers and also to the situation of the individual NEDs and therefore those sufficiency levels cannot be compared at all. In the event of a disciplinary review of an issuer, no doubt the issue of whether NEDs have spent sufficient time on the business of the issuer will be scrutinized. On what basis can Exchange determine sufficiency when there is no meaningful comparison and when the Exchange has no knowledge of the business itself? I fail to see any practical merit of an annual confirmation other than "sounds good".

Question 6: Do you agree to include a disclosure requirement in the Corporate Governance Report (paragraph L(d)(ii) of Appendix 14) that NEDs have made annual confirmation to the nomination committee that they have spent sufficient time on the issuer's business?

Disagree and please refer to (5).

Question 7: Do you agree to expanding CP A.5.3 (re-numbered CP A.6.3) to state that a director should limit his other professional commitments and acknowledge to the issuer that he will have sufficient time to meet his obligations?

Disagree

- (i) In considering whether a person is a suitable candidate of being a director, in particular for non-executive director positions, the experience and knowledge of that person is one of the main criteria that a listed issuer will consider. Experience and knowledge could earn from past and /or present professional commitments. It is very valuable to the issuer and the shareholders.
- (ii) The statistics shown in paragraph 39 of the consultation paper indicates that only a very small percentage of directors holds more than 5 positions. It is not at a level that renders an imposition of an upper limit.
- (iii) In paragraph 37, it was commented that in a number of disciplinary cases, lack of attention given by INEDs to their duties was a contributing factor to the non-compliance with Rules by the issuer. We would like Stock Exchange to disclose the number of other positions/directorship these INEDs were holding during the period under review in those disciplinary cases.

Question 8: Do you agree to expanding CP A.5.3 (re-numbered CP A.6.3) to state that an NED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business?

Disagree and please refer to (5).

Question 9: Do you agree to upgrading RBP D.1.4 to a CP (re-numbered CP D.1.4) and amending it to state that an NED's letter of appointment should set out the expected time commitment?

Disagree and please refer to (5).

Question 10: Do you agree to upgrading RBP A.5.6 to a CP (re-numbered CP A.6.6) and to amending it to encourage timeliness of disclosure by a director to the issuer on any change to his significant commitments?

Agree

Question 11: Do you consider that there should be a limit on the number of INED positions an individual may hold? Disagree and please refer to (7).

Question 12: If your answer to Question 11 is "yes", what should be the maximum number? NA

Question 13: If your answer to Question 11 is "yes", do you think that the limitation should be a Rule or a CP? NA

2. Directors' training and independent non-executive directors

Question 14: Do you agree that we should upgrade RBP A.5.5 (requirement for continuous professional development) to a CP (re-numbered CP A.6.5)?

Principally agree.

Question 15: Do you agree that the minimum number of hours of directors training should be eight?

Agree and not more than 8 hours is reasonable.

Question 16: What training methods do you consider to be acceptable for the requirements stated in the proposed CP (re-numbered RBP A.6.5)?

- (i) Forms part of the board meetings which could be scheduled into 2 or more meetings as the case may be in one year which can include briefings by in-house counsel or com sec or management where appropriate.
- (ii) Attending and/or giving speeches at relevant conferences.
- (iii) Preparing and giving seminars, article writing that is published.
- (iv) Self research by reading relevant books and articles.
- (v) Compliance with CPD requirement of recognised professional bodies such as HKIOD, HKICPA, ICAEW, or other bodies that impose CPD requirement, should count towards training hours.

The above could be divided into structured training and un-structured training and be weighted to get to 8 hours.

Question 17: Do you agree that we should upgrade RBP A.3.2 (at least one-third of an issuer's board should be INEDs) to a Rule (re-numbered Rule 3.10A)?

Agree but see final paragraph comment in 19.

Question 18: Do you agree that this Rule (at least one-third of an issuer's board should be INEDs) be effective after a transitional period as described in paragraph 87 above?

Agree but see final paragraph comment in 19.

Question 19: Do you agree that we should upgrade RBP A.4.3 (shareholder to vote on a separate resolution for the further employment of an INED who has served more than nine years) to a CP (re-numbered CP A.4.3)?

Disagree.

Currently there is already a rotation requirement at each AGM and the details of the directors for rotation are disclosed including the length of service of those directors. As long as all relevant information is disclosed, shareholders can make self judgement whether they should vote for the reappointment of the directors. By having a separate resolution for the further employment of an INED who has served more than nine years is placing (i) a false impression to the public that long service is equivalent to non independence; (ii) undue unfairness to the INED who has uphold his/her duty as an independent director all the time; (iii) undue disruption to the issuer as a result of losing all its INEDs in one go.

Furthermore, the Exchange on the one hand seeks to limit a director's other professional commitments and trying to impose minimum time spent on the business of an issuer, at the same time it requires issuers to increase the number of INED placing more demand of NEDs in the market place. They seem to be working against each other and could impede on the quality of available candidates to fill NED positions.

Question 20: Do you agree with our proposal to upgrade RBP A.4.8 (issuer should include explanation of its reasons for election and independence of an INED in a circular) to a CP (re-numbered CP A.5.5)?
Agree.

3. Board Committees

A. Remuneration Committee

Question 21: Do you agree with our proposal to move the requirement for issuers to establish a remuneration committee with a majority of INED members from the Code (CP B.1.1) to the Rules (Rule 3.25)? Agree but see final paragraph comment in 19.

Question 22: Do you agree with our proposal that the remuneration committee must be chaired by an INED? Agree.

Question 23: Do you agree with our proposal to move the requirement for issuers to have written terms of reference for the remuneration committee from the Code (CP B.1.1) to the Rules (Rule 3.26)? Agree

Question 24: Do you agree with our proposal to add a new Rule (Rule 3.27) requiring an issuer to make an announcement if it fails to meet the requirements of proposed Rules 3.25, 3.26 and 3.27? Agree.

Question 25: Do you agree with our proposal that issuers that fail to meet Rules 3.25, 3.26 and 3.27 should have three months to rectify this?
Agree but we consider 3 months is too short a period to remedy a breach of 3.25.

Question 26: Do you agree that we should add "independent" to the professional advice made available to a remuneration committee (CP B.1.2, renumbered CP B.1.1)?
Exchange to clarify whether independent to the issuer, or independent to the directors or independent to the shareholder.

Question 27: Do you agree that, in order to accommodate Model B, we should revise CP B.1.3 (re-numbered CP B.1.2) as described in paragraph 117?
Agree.

Question 28: Do you agree that where the board resolves to approve any remuneration with which the remuneration committee disagrees, the board should disclose the reasons for its resolution in its corporate governance report)? If your answer is "yes", do you agree that RBP B.1.8 should be revised (see Appendix II) and upgraded to a CP (renumbered CP B.1.6). Please give reasons for your views.
Disagree.

(i) Whilst it is appreciated that the public is placing more focus on the remuneration of directors especially since the financial crisis, this is only one of the many decisions the board makes and some

of the other decisions may even have much greater financial implication than remuneration of directors.

(ii) Any recommendation is to be subject to discussion because people have different views and a recommendation may be rejected after the discussion or may be approved with a simple majority. This kind of decision making process represents merely day to day operations of a business. Paragraph 104 in the consultation paper contains this statement- "If the proper procedure for deciding remuneration has been followed, there may be no need to publish details of disagreements arising during negotiations between the remuneration committee and the whole board. An agreement may eventually be reached. So, disclosure may not be necessary as the different views were simply part of the normal operation of the board and the remuneration committee." This paragraph basically summarises our view and the Exchange must not cast doubt that proper procedure for deciding remuneration has not been followed.

(iii) The exchange should understand that the remuneration structure of a company is not a brand new agenda in a board meeting. Remuneration policies exist and they form the basis on which the remuneration committee recommends to the Board. Since the Exchange is advocating more directors training, sufficient time spent on the business etc so as to enhance the directors' knowledge about the business, technical matters etc., the Board should therefore be very well aware of the remuneration policies of the company as well as the general trend of the market and the firm's intention on this matter. The recommendation by the remuneration committee should therefore not be a surprise or appear radical to the Board. Our view is that there will not be "disagreement", rather there will be healthy debate by different members with different views to come to a final conclusion. Disclosure of such debate is not required.

Question 29: Do you agree that the term "performance-based" should be deleted from CP B.1.2(c) (re-numbered CP B.1.2(b)) and revised as described in paragraph 118? Agree.

B. Nomination Committee

Question 30: Do you agree that RBP A.4.4 (establishment and composition of a nomination committee, re-numbered CP A.5.1) should be upgraded to a CP? Please give reasons for your views.

Question 31: Do you agree that the proposed CP (currently RBP A.4.4) should state that the nomination committee's chairman should be an INED? Please give reasons for your views.

Question 32: Do you agree that RBP A.4.5 (nomination committee's terms of reference, re-numbered CP A.5.2) should be upgraded to a CP? Please give reasons for your views.

Question 33: Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee review of the structure, size and composition of the board should be performed at least once a year? Please give reasons for your views.

Question 34: Do you agree that the proposed CP (currently RBP A.4.5(a)) should state that the nomination committee's review of the structure, size and composition of the board should implement the issuer's corporate strategy? Please give reasons for your views.

Question 35: Do you agree that RBP A.4.6 (availability of nomination committee's terms of reference) should be upgraded to a CP? Please give reasons for your views.

Question 36: Do you agree that the proposed CP (currently RBP A.4.6, re-numbered CP A.5.3) should state that issuers should include their nomination committee's terms of reference on the HKEx website?

Disagree. Not necessary to create two versions of the truth when it is already on the company's website.

Question 37: Do you agree that RBP A.4.7 (sufficient resources for the nomination committee, re-numbered CP A.5.4) should be upgraded to a CP?

Disagree to impose law on something that is not possible to define and not comparable among companies.

Question 38: Do you agree that the proposed CP (currently RBP A.4.7, re-numbered CP A.5.4) should clarify that a nomination committee should be able to seek independent professional advice at the issuer's expense? Disagree. This proposal implies that listed issuers and NEDs are not mature enough to be capable of seeking the best solution for the company and the shareholders.

C. Corporate Governance Committee

Question 39: Do you agree with the proposed terms of reference listed in paragraph 141?

Disagree. Basically every single action made by a company is covered in Corporate Governance and at this stage there is no clear scope of what is to be covered in the term of reference. The proposed duties in paragraph 141 is too wide at this stage. It is totally impossible to determine how one would be able to comply the requirement in full satisfaction of the Exchange in particular when each issuer's requirement can be very different as a result of their size, nature of the business, the location of operations etc.

Disagree that the Corporate Governance Committee is a CP.

Question 40: Do you consider that the committee(s) performing the proposed duties listed in paragraph 141 should submit to the board a written report on its work annually? Please give reasons for your views.

Disagree. Please refer to 39.

Question 41: Do you consider that this report (as described in paragraph 140) should be published as part of the issuer's corporate governance report? Please give reasons for your views. Disagree. Please refer to 39.

Question 42: Do you agree with introducing RBP D.3.3 stating that an issuer should establish a corporate governance committee? Please give reasons for your views.

It can be considered provided that Exchange gives much clearer guidance on scope. Please refer to 39.

Question 43: Do you agree the duties of an existing committee or committees can be expanded to include those of a corporate governance committee?

Please give reasons for your views.

It can be considered provided that Exchange gives much clearer guidance on scope. Disagree that this being a CP. Please refer to 39.

Question 44: Do you agree with the addition of CP D.3.2 stating that the committee performing the proposed duties listed in paragraph 141 should comprise a majority of INEDs? Please give reasons for your views.

It can be considered provided that Exchange gives much clearer guidance on scope. Disagree that this being a CP. Please refer to 39.

Question 45: Do you agree with the proposal to add a note to CP D.3.2 stating that the committee should include one member who is an executive director or non-executive director with sufficient knowledge of the issuer's day-to-day operations? Please give reasons for your views. Disagree that this being a CP. Please refer to 39.

D. Audit Committee

Question 46: Do you agree with our proposal to upgrade RBP C.3.7 (audit committee's terms of reference should include arrangements for employees to raise concerns about improprieties in financial reporting) to a CP?

Disagree

Theoretically, it was good to have audit committee to review the issuer's employees concerns on possible improprieties in financial reporting, internal control and other matters. However, it may be impractical in reality and may impair INED's independence by involving them on daily operational concerns.

Question 47: Do you agree with our proposal to amend CP C.3.3(e)(i) to state that the audit committee should meet the external auditor at least twice a year?

We do not disagree the proposal to amend CP C3.3(e) (i) such that audit committee should meet the external audit as least twice a year. This is a good practice provided that the initial planning and conclusions of the audit will be discussed in time with the Audit Committee.

Question 48: Do you agree that a new RBP should be introduced to encourage audit committees to establish a whistleblowing policy?

Disagree

While we appreciate the rationale underlying a whistleblowing policy, we thought that it was not applicable to all issuers/companies depending on its size and management style. The effectiveness of whistleblowing policy not only relies on its reporting structure, but also its subsequent management and compliance. The establishment of whistleblowing policy and possible procedures may impede INED's independence by increasing their involvement on daily operational matters. We believe that the advantages and disadvantages are equally the same for setting up whistleblowing policy. One of the drawbacks is this may provide a channel for inappropriate matters to be raised to the board level. Example is that while the hotline of 999 is extremely useful, it has been seriously misused resulting in wasted cost and time in the expense of the matters that needed attention. Last but not the least, resources constraint is one of the concerns for impracticability of whistleblowing policy. Exchange should not penalize issuers for not having one.

5. Board Evaluation

Question 53: Do you agree with our proposal to add new RBP B.1.8 that issuers should conduct a regular evaluation of its own and individual directors' performance?

We do not totally disagree with the proposal to add new RBP B.1.8 that issuers should conduct a regular evaluation of its own and individual directors' performance. Currently, we have already put in place disclosing the directors' participation by means of number of board meetings attended. However, we considered that other means of qualitative comments may not be practically achievable and measurable if those means are going to be put under the new RBP. We doubted that such disclosure can be compared across various issuers and is meaningful for their investors.

6. Board Meetings

A. Considering a matter where there is a conflict of interest by a physical board meeting rather than a written board resolution

Question 55: Do you agree with our proposals to add a note to CP A.1.8 (re-numbered CP A.1.7) stating that attendance at board meetings can be achieved by telephonic or video conferencing?

We agree to the proposal to add a note to CP A.1.8 stating that attendance at board meetings can be achieved by telephonic or video conferencing. We believe that it can enhance the practicability of having a board discussion rather than circulation of board resolution on matters of Conflict of Interest.

B. Directors' Attendance at Board Meetings

Question 56: Do you agree with our proposal to add the notes to paragraph I(c) of Appendix 14 (on attendance at board meetings) as described in paragraph 195 of the Consultation Paper?

We agree to add the proposed notes to paragraph I(c) of Appendix 14 (on attendance at board meetings). We believe that it can enhance the quality and visibility of disclosure information underlying the board meetings.

Question 58: Do you agree with our proposal that an issuer disclose, for each named director, the number of board or committee meetings he attended and separately the number of board or committee meetings attended by his alternate?

We do not agree with the proposal that an issuer should disclose the number of board or committee meetings that the named director attended and separately the number of board or committee meetings attended by his alternate. We believe that such details will add additional burden to the bulk information contained in the Annual Report and it is not of great value to investors.

C. Removing Five Percent Threshold for Voting on a Resolution in which a Director has an Interest

Question 59: Do you agree with our proposal to revise Rule 13.44 to remove the exemption described in paragraph 199 (transactions where a director has an interest)?

We could hardly agree with the proposal to revise Rule 13.44 to remove the exemption described in paragraph 199. While we appreciate the rationale behind, we cannot totally ignore the business reality that there is materially when we are considering Director's interest. In other words, the exception is needed. Otherwise, issuers could easily breach the Rule unless the Directors just focus on limited areas.

9. Providing Management Accounts or Management Updates to the Board

Question 74: Do you agree that we should add CP C.1.2 stating issuers should provide board members with monthly updates as described in paragraph 240 of the Consultation Paper?

We do not totally disagree adding CP C.1.2 stating issuers should provide board members with monthly updates as described in paragraph 240 since this may enhance the Board supervision on Excom level. However, its possible implementation is in doubt:

- a) this may impede INED's independence by drawing in INED attention on daily operation; and*
- b) the dispatch of monthly updated information means that issuers have to take extra care on their duties related to disclosure of price sensitive information and model code.*