

Question 1

Do you agree with our proposal to introduce a code provision ("CP") requiring an issuer's board to set culture in alignment with issuer's purpose, value and strategy?

Yes

Please give reasons for your views.

While we have no objection to stating a company's culture, listed issuers might need some guidance in how to express culture in clear terms and in particular how to link it with the purpose, value and strategy. Most issuers would have a mission and vision statement but culture is much broader than that and is something more intangible and not easy to pin down in words.

Question 2a

Do you agree with our proposal to introduce a CP requiring establishment of an anti-corruption policy?

Yes

Please give reasons for your views.

Anti-corruption is an important aspect of corporate governance and is a safeguard of corporate integrity. The proposal would encourage companies without an anti-corruption policy already to adopt one.

Question 2b

Do you agree with our proposal to upgrade a Recommended Best Practice ("RBP") to CP requiring establishment of a whistleblowing policy?

Yes

Please give reasons for your views.

Whistleblowing policy comes hand in hand with anti-corruption policy. It allows staff and related parties to report corruption as well as other illegal, inappropriate or abusive behaviour to be reported without fear of repercussions. The proposal would encourage companies without a whistleblowing policy already to adopt one.

Question 3

Do you agree with our proposal to introduce a CP requiring disclosure of a policy to ensure

independent views and input are available to the board, and an annual review of the implementation and effectiveness of such policy?

Yes

Please give reasons for your views.

We do not object to this proposal as it may help raise awareness of the importance of independent views. We are concerned that some issuers with limited resources might find it difficult to cope with the increasingly stringent disclosure requirement.

Clarification of the meaning of “ensuring independent views and input are available to the board” is needed. Guidance for assessment of the implementation and effectiveness of these policies is also required.

Question 4a

Do you agree with our proposal regarding re-election of an independent non-executive director serving more than nine years ("Long Serving INEDs") to revise an existing CP to require (i) independent shareholders' approval; and (ii) additional disclosure on the factors considered, the process and the board or nomination committee's discussion in arriving at the determination in the explanation on why such Long Serving INED is still independent and should be re-elected?

No

Please give reasons for your views.

We strongly oppose to requirement (i). The assumption that INEDs who have served on a board for 9 years or more would lose their independence is not entirely sound. Independence should not be defined by the length of tenure. It should be assessed on a case-by-case basis with reference to the integrity and qualification of the individual. The emphasis on tenure alone when judging the independence of an INED will become a tick-the-box approach that takes form over substance and inevitably disregards the qualitative aspects. Companies may lose highly qualified directors who could serve the companies' interests well.

Most INEDs are professionals who are very well aware of their duty in protecting minority shareholders' interests, particularly in connected transactions, overseeing audit and risks and other key board matters. There is no empirical evidence that Long Serving INEDs are more prone to misconduct or are more likely to collude with major shareholders to exploit minority shareholders. So long as the Long Serving INEDs take due responsibility in making their decisions, there is no reason to suspect their independence is being compromised due to their long service. Long serving independent directors can add value to a board with their in-depth understanding of the operations of the listed company and are well positioned to advise the board and protect the minority shareholders. The fact that a Long Serving INED's knowledge of the issuer's affairs can bring valuable contribution the company is acknowledged by the Exchange in the Consultation Paper.

Further, in accordance with the “One-share-one-vote” principle, non-independent shareholders should be entitled to vote on the election of directors of the board. Unlike the rest of the world where shareholdings of companies are more distributed, a high number of companies in Hong Kong and Asia are majority-owned. Adoption of the western model of governance without modification may unfairly disenfranchise majority shareholders in the process.

Independent shareholders’ approval for Long Serving INEDs is not a foolproof method to ensure the independence of INEDs. Independent shareholders comprise both institutional investors and retail investors. Even INEDs elected by independent shareholders often times represent certain shareholder groups and may be armed with their own agenda. The rise of active owners and the shift from portfolio management to "control" mindset have also prompted certain institutional investors to use their voting rights to steer companies towards their own goals to serve their own interests. One must not forget board directors are jointly and severally responsible for all decisions and the ability of the entire board to work together with the common interests of the company is very important. Assuming INEDs elected only by institutional investors and retail investors will represent independent shareholders’ interest as a whole is an oversimplification. Some INEDs are perceived to be prima facie independent simply because they are less well-known in the community and there is little publicly available information about them or their connection to a company if any. It is doubtful whether they can contribute more to a company than commercially recognised high calibre INEDs with in-depth knowledge about a company who will be indefensibly presumed to be non-independent if the proposal is adopted.

We have no objection to requirement (ii). Issuers could provide more information about the long serving INED’s experience and contribution when nominating them for the consideration of shareholders. However, majority shareholders should not be prohibited to vote.

Question 4b

Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new independent non-executive director ("INED") at the forthcoming annual general meeting where all the INEDs on the board are Long Serving INEDs, and disclosing the length of tenure of the Long Serving INEDs on the board on a named basis in the shareholders’ circular?

No

Please give reasons for your views.

We do not object to disclosing the length of tenure of Long Serving INEDs on the board on a named basis in the shareholders' circular. As for appointing an additional new INED where all INEDs are Long Serving INEDs, we do not agree that it should be a CP. Please refer to our reply to Q4(a).

Question 5

Do you agree with our proposal to introduce a new RBP that an issuer generally should not grant equity-based remuneration (e.g. share options or grants) with performance-related elements to INEDs as this may lead to bias in their decision-making and compromise their objectivity and independence?

Yes

Please give reasons for your views.

We note this is not a common practice amongst our members.

Question 6a

Do you agree with our proposal to highlight that diversity is not considered to be achieved by a single gender board in the note of the Rule?

No

Please give reasons for your views.

We do not agree with the proposal because we believe true diversity takes many forms. There is no reason why gender diversity in a boardroom should be singled out. Appointment of directors should always be by merit. The proposal would negate an issuer's efforts in achieving other aspects of diversity which are equally important.

Question 6b

Do you agree with our proposal to introduce a Mandatory Disclosure Requirement ("MDR") requiring all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at both: (a) board level; and (b) across the workforce (including senior management)?

No

Please give reasons for your views.

We do not agree to the proposal. Please refer to our reply to Q6(a).

We believe there is no resistance amongst Hong Kong listed issuers to appointing female directors. Hong Kong is reputed for its workplace gender equality, as evidenced by the fact that many women are occupying the very top positions in both public and private sectors. It is only a matter of finding the right director candidates with suitable experience and qualifications. Although board directors are expected to, and should, have different views towards things but the ability to work together is also important.

There is also the question of supply. The consultation paper pointed out as of December 2020, around 32.9% of Hong Kong issuers had no female directors on the board and that makes 842 out of 2,559. These companies will all need to appoint at least one female director within 3 years. Even if one female individual takes up multiple directorships, the number of female individuals required is still not small. Availability of female directors will depend on the demography and culture of a country, as well as the industry and sector. If the proposal is adopted, a longer transition period should be granted to avoid

companies outbidding each other for the service of experienced and qualified female director candidates just for compliance purpose.

Hiring of staff and appointment of senior management should be by merit. Companies which fail to achieve gender balance is usually limited by the nature of the industry. For example, there are more male in construction and engineering industries and more female in fashion retail and cosmetics industries. Setting a target and timeline for gender diversity at the board and across the workforce is superfluous.

Question 6c

Do you agree with our proposal to introduce a CP requiring the board to review the implementation and effectiveness of its board diversity policy annually?

No

Please give reasons for your views.

A company should be allowed to set up its board diversity policy based on its own company and industry circumstances. Such policy should not be unreasonably bound by rigid gender requirement.

Question 6d

Do you agree with our proposal to amend the relevant forms to include directors' gender information?

Yes

Please give reasons for your views.

Question 7

Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a nomination committee chaired by an INED and comprising a majority of INEDs?

Yes

Please give reasons for your views.

We can support that as we note this is a common practice amongst many listed issuers.

Question 8

Do you agree with our proposal to upgrade a CP to a MDR to require disclosure of the issuer's shareholders communication policy (which includes channels for shareholders to communicate their views on various matters affecting issuers, as well as steps taken to solicit and understand the views of shareholders and stakeholders) and annual review of such policy to ensure its effectiveness?

Yes

Please give reasons for your views.

Question 9

Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements?

Yes

Please give reasons for your views.

We agree and believe this can be done without much extra effort as the information is readily available.

Question 10

Do you agree with our proposal to delete the CP that requires issuers to appoint non-executive directors for a specific term?

Yes

Please give reasons for your views.

Question 11

Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between corporate governance and environmental, social and governance ("ESG") in the introductory section; and (b) including ESG risks in the context of risk management under the Code?

Yes

Please give reasons for your views.

We agree and believe it is necessary. We notice some confusion about the "G" in "ESG" -- that whether

it covers the "G" in "CG" or not. To our humble understanding, the "G" in "ESG" concerns the board's governance approach specifically towards Environmental and Social issues, for example, whether it sets out policies governing them, devote resources, and develop means to monitor progress and measure success; whether any ESG Committee, or Working Group has been set up, etc. Whereas the "G" in "CG" deals with the other aspects of governance, such as risk management (it now covers climate change and other environmental and social risks), internal control, checks-and-balances, reporting, etc. In other words, although ESG and CG both rest with the board ultimately, they have their own distinct focus areas, and one doesn't replace the other. More clarification and delineation would be helpful.

Question 12

Do you agree with our proposal to amend the Rules and the ESG Guide to require publication of ESG reports at the same time as publication of annual reports?

Yes

Please give reasons for your views.

While most of our members are publishing both annual report and ESG report at the same time, with the additional disclosure requirements proposed in this consultation, if adopted, more preparation work needs to be done. Smaller issuers might find it a stretch of their resource to manage both reports concurrently, and larger issuers adopting complex international frameworks and standards such as TCFD, CDP, etc., would require more lengthy preparation. We recommend that the Exchange takes those into account when deciding on the publishing timeline.

Question 13

Do you have any comments on how the re-arranged Code is drafted in the form set out in Appendices III and IV to the Consultation Paper and whether it will give rise to any ambiguities or unintended consequences?

No

Please give reasons for your views.

Question 14

In addition to the topics mentioned in the Consultation Paper, do you have any comments regarding what to be included in the new guidance letter on corporate governance (i.e. CG GL) which may be helpful to issuers for achieving the Principles set out in the Code?

No

Please give reasons for your views.

Question 15a

Do you agree with our proposed implementation dates for all proposals (except the proposals on Long Serving INED): the financial year commencing on or after 1 January 2022?

No

Please give reasons for your views.

Question 15b

Do you agree with our proposed implementation dates for proposals on Long Serving INED: the financial year commencing on or after 1 January 2023?

No

Please give reasons for your views.