

**Responses to Consultation Questions**  
**HKEX Consultation Paper - Corporate Governance Code and Related Listing Rules**

**Cathay Pacific Airways Limited**

**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  
 No

Please give reasons for your views.

We look forward to the guidance referred to in paragraph 51 of the paper. Ahead of that guidance, we are not sufficiently clear as to (i) what the Exchange means by culture in the context of the proposed CP and (ii) what disclosures about culture will be expected. In the UK corporate governance code, culture refers to "policy, practices and behaviour". In the Australian corporate governance code, culture refers to "acting lawfully, ethically and responsibly". It would be helpful if the guidance (or indeed the CP itself) included something similar.

**Question 2(a)**

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

- Yes  
 No

Please give reasons for your views.

We agree with the reasons in the consultation paper. We expect it to be made clear (either in the guidance referred to in paragraph 60 of the paper or in the CP itself) that policies which are included in codes of conduct (as opposed to being self standing) are capable of complying with the CP.

**Question 2(b)**

Do you agree with our proposal to upgrade a Recommended Best Practice ("**RBP**") to CP requiring establishment of a whistleblowing policy? Please give reasons for your views.

- Yes  
 No

We agree with the reasons in the consultation paper. We expect it to be made clear (either in the guidance referred to in paragraph 60 of the paper or in the CP itself) that policies which are included in codes of conduct (as opposed to being self standing) are capable of complying with the CP.

**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
- No

Please give reasons for your views.

We do not think this proposal is necessary. It is the INEDs themselves who provide independent views and input to the board. This they can be expected to do so long as they satisfy the independence requirements of MB Rule 3.13. The requirement for annual confirmations of independence is sufficient to ensure continuance of such satisfaction. If, contrary to our views, the proposal goes ahead, we agree that the policy (like all policies) should be reviewed. But we think it should be up to listed companies to decide, in the light of their own circumstances, how often this should happen.

#### **Question 4(a)**

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?

- Yes
- No

Please give reasons for your views.

Directors owe their duties to all shareholders. All shareholders should therefore be able to vote on who their companies' directors are. Shareholders should not be prevented by the listing rules from voting on the appointment of directors. It is appreciated that shareholders who are connected persons cannot vote in favour of resolutions to approve connected transactions with them. But that is because there is a conflict of interest. All shareholders have the same interest in who is appointed to the boards of their companies.

#### **Question 4(b)**

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?

- Yes
- No

Please give reasons for your views.

Shareholders control the appointment of directors not companies. So, an issuer cannot be required to appoint an additional director against the wishes of its shareholders. Separately, we think that including information about the length of service of directors in the relevant company's annual report is sufficient and does not need to be repeated in agm notices (which are sent to shareholders with annual reports). We do not agree with the suggestion that long serving directors be phased out. Provided that a company has properly considered and disclosed the reasons for retaining long serving directors, the decision whether or not to retain them should be one for its shareholders to make.

**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  
 No

Please give reasons for your views.

This proposal seems to proceed on the misconceived view that INEDs owe different duties to shareholders from those owed by other directors. This is simply not the case. All directors owe the same duties to shareholders. If a board considers that the interests of shareholders are best served by the grant of equity based remuneration to its directors, we see no reason why the listing rules should discourage such a grant to some directors just because they are independent.

**Question 6(a)**

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?

- Yes  
 No

Please give reasons for your views

We agree with the reasons in the paper.

**Question 6(b)**

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)?

- Yes  
 No

Please give reasons for your views.

We consider that gender diversity is best achieved by appropriate long term recruitment and retention policies. We believe that the setting of targets should be a matter for listed companies to decide themselves. We support appropriate gender diversity disclosures.

**Question 6(c)**

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?

- Yes  
 No

Please give reasons for your views.

We agree that a board diversity policy (like all policies) should be reviewed. But we think it should be up to listed companies to decide, in the light of their own circumstances, how often this should happen.

**Question 6(d)**

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

- Yes
- No

Please give reasons for your views.

We agree with the reasons in the paper.

**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
- No

Please give reasons for your views.

We have considered the merits of establishing a nomination committee but have concluded that it is in the best interests of our company and potential new appointees that the board collectively reviews and approves the appointment of any new director as this allows a more informed and balanced decision to be made by the board as to suitability for the role.

**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
- No

Please give reasons for your views.

We support disclosure of issuers' shareholder communication policy but do not think there should be a requirement to have a policy on disclosure to stakeholders. As a matter of company law, directors owe no duty to stakeholders, so should not be required to solicit information from them. If a listed company has a communications policy, we agree that (like all policies) it should be reviewed. But we think it should be up to listed companies to decide, in the light of their own circumstances, how often this should happen.

**Question 9**

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

- Yes
- No

Please give reasons for your views.

We do not believe that shareholders are likely to be particularly interested in the immediate disclosure of this information. It is of course right that directors should attend agms if they can, though COVID-19 is (and may continue to do so for some time in the future) making this difficult, particularly for directors resident outside Hong Kong.

**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
- No

Please give reasons for your views.

We agree with the reasons in the paper.

**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
- No

Please give reasons for your views.

We agree with the reasons in the paper.

**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
- No

Please give reasons for your views.

We agree with the reasons in the paper.

**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?

- Yes
- 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?

- Yes
- No

Please give reasons for your views.

Please see our answers to questions 1 and 2 above.

**Question 15(a)**

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?

- Yes
- No

Please give reasons for your views.

The changes proposed are major ones. They are unlikely to be finalized until the second half of 2021. The period to prepare for compliance with them will be too short if they come into effect on 1 January 2022. We suggest that they do not come into effect until 1 January 2023.

**Question 15(b)**

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

- Yes
- No

Please give reasons for your views.

We do not agree that this proposal should be implemented at all.