

**Consultation Paper on
Review of Corporate Governance Code and
Related Listing Rules**

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (“Exchange”) on 16 April 2021 issued a consultation paper on “Review of Corporate Governance Code and Related Listing Rules” (“Consultation Paper”).

The Law Society provides the following submissions on the questions posed. The same abbreviations and definitions appearing in the Consultation Paper are used in the submission below.

Question 1. Do you agree with our proposal to introduce a CP requiring an issuer’s board to set culture in alignment with issuer’s purpose, value and strategy?

Law Society’s response:

We agree with the proposal.

Question 2. Do you agree with our proposal to:

- (a) introduce a CP requiring establishment of an anti-corruption policy; and
- (b) upgrade a RBP to CP requiring establishment of a whistleblowing policy?

Law Society’s response:

We agree with the proposal. However, we disagree that whistleblowers may always be entitled to remain anonymous as the proposed paragraph D.2.6 of the

Corporate Governance Code implies. We believe it is sufficient to provide that the Board of Directors should not ignore complaints on the basis of anonymity per se.

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?

Law Society's response:

We agree with the proposal.

Question 4(a). Do you agree with our proposal regarding re-election of Long Serving INEDs to revise an existing CP to require (i) independent shareholders' approval; and (ii) Additional Disclosure?

Law Society's response:

We agree with the proposal.

Question 4(b). Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new INED at the forthcoming AGM 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?

Law Society's response:

We agree with the proposal.

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?

Law Society's response:

We agree with the proposal.

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?

Law Society's response:

We believe the emphasis should be on equality of opportunity among all genders, that gender alone should not be a factor in considering the suitability of a candidate for board appointment, and that a single gender board should not be the result of gender bias or discrimination (with the awareness that a single gender board may itself be an indication as such).

We do not think it should be assumed that just because a company has a single gender board, that company has necessarily failed to achieve diversity. Neither do we think that companies (including IPO candidates) should be required to set hard targets and deadlines to achieve diversity.

The emphasis should be on whether proactive steps have been taken to ensure board diversity and that appropriate factors suitable to the particular issuer have been taken into account in addressing diversity issues.

It seems impliedly assumed that gender diversity is a pre-requisite in order to reap the benefits of diversity which is described in paragraph 84 of the Consultation Paper as “an important driver of board’s effectiveness” that “brings unique perspectives to the boardroom and enhances board performance”. While we do not downplay the importance of gender diversity especially in the context of gender equality, we do not see gender diversity as a mandatory pre-requisite in all cases in order to achieve the objectives referred to in paragraph 84 of the Consultation Paper.

We agree with the proposal to introduce a CP requiring the board to review the implementation and effectiveness of its board diversity policy annually, and would suggest that the Exchange could consider requiring issuers with a single gender board to specifically address whether diversity has been achieved in view of their particular board composition.

We do believe that gender diversity on a board is often a driver of business efficiency and of more creative and considered thinking. However, at this stage, it should not be mandatory but be seen as a goal for all companies to aim at, such that, it will be boards that are reasonably diverse that are the rule and single gender boards which are the exception.

Question 6(b). Do you agree with our proposal to introduce a 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)?

Law Society's response:

Please refer to our response to Question 6(a).

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?

Law Society's response:

Please refer to our response to Question 6(a).

Question 6(d). Do you agree with our proposal to amend the relevant forms to include directors' gender information?

Law Society's response:

We agree it would be useful to have the information in any event.

Question 7. Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a NC chaired by an INED and comprising a majority of INEDs?

Law Society's response:

We agree with the proposal.

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?

Law Society's response:

We agree with the proposal.

Question 9. Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements?

Law Society's response:

We agree with the proposal.

Question 10. Do you agree with our proposal to delete the CP that requires issuers to appoint NEDs for a specific term?

Law Society's response:

We agree with the proposal.

Question 11. Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between CG and ESG in the introductory section; and (b) including ESG risks in the context of risk management under the Code?

Law Society's response:

We agree with the proposal.

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?

Law Society's response:

We agree with the proposal.

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 this paper and whether it will give rise to any ambiguities or unintended consequences?

Law Society's response:

We have no comment except on Part 1-J on "Diversity" and Part 2-B.1.3 – please refer to our response to Question 6(a).

Question 14. In addition to the topics mentioned in this paper, do you have any comments regarding what to be included in the CG GL which may be helpful to issuers for achieving the Principles set out in the Code?

Law Society's response:

We have no comment.

Question 15. Do you agree with our proposed implementation dates of:

- (a) for all proposals (except the proposals on Long Serving INED): financial year commencing on or after 1 January 2022;
and
- (b) for proposals on Long Serving INED: financial year commencing on or after 1 January 2023?

Law Society's response:

We agree with the proposal.

**The Law Society of Hong Kong
8 June 2021**