

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.

Culture is at the core of any organisation and should be the visible outcome of an organisations purpose, value and strategy. That said this is difficult to measure. We suggest a Corporate Governance Code that drives the right behaviours and conduct. Poor conduct is a result of poor culture which can be measured. By introducing a code of conduct that is reportable to issuers alongside a framework for measurement this allow issues to understand any deviance from the code that are not in line with the values and principles of the organisation.

We suggest the framework should:

1. Outline transparently the purpose, principles and values of the organisation
2. Disclose this code of conduct to guide the behaviour of the employees at all levels of the organisation with the board being notified of any significant breaches

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.

We believe this should go further with the introduction of a mandatory disclosure obligation with the reporting compliance that this has been communicated, understood and measured by the organisation.

Any significant breaches of this policy should be reported to the Board with the expectation issues are assessed and addressed by the policy, adjusting if required.

This policy should be reviewed against a regular cycle at least every 2 years.

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.

We believe this should go further with the introduction of a mandatory disclosure obligation with the reporting compliance that this has been communicated, understood and measured by the organisation.

Audit Committees should receive all complains and concerns with any significant breaches requiring the assessment of the relevant policy and adjustment if the policy is identified to have any gaps.

Larger issuers should implement an independent whistleblowing process with significant beaches being independently assessed and investigation followed by reporting back via the Audit Committee.

This policy should be reviewed on against a regular reporting cycle of at least 2 years.

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?

No

Please give reasons for your views.

INEDS should be providing independent input and views as part of their role on the board. Over time with a longer tenure of INEDS this independence may be watered down. We encourage HKEX instead to review and strengthen the requirements for INEDS to support independent input by including term limits rather than seeking external advice from non-board members as this dilutes the role and value of INEDS.

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?

Yes

Please give reasons for your views.

Implement strict 9 year term limits for INEDS and communicate that this will be introduced within 3 years given the importance of independence to a sound corporate governance framework. The benefit of introducing this in Hong Kong which has a significant amount of long-tenured INEDS would be an opportunity to improve on board turnover and refreshment supporting greater quality independence of thought as well as enhancing board diversity.

To counterbalance the significant presence of block shareholders in Hong Kong introduce a rule to appoint a lead INED (who is not a tenured INED) as a requirement.

Introduce a CP that INEDS should meet as a group at least two times a year.

We believe that the expectations of independent shareholders be understood by all listed companies with respect to the election of the directors. The significant voting power of block shareholders in Hong Kong can mean that the will of the independent shareholders is not heard when they do not support the re-election of NEDS & INEDS. We recommend that the independent shareholder vote should be disclosed separately for all re-elections of NEDS and INEDS and if there is not a majority support the from independent shareholders that this be reported back to the Exchange within 30 days of the board meeting with an explanation as to why that director should continue in office.

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?

Yes

Please give reasons for your views.

Implement strict 9 year term limits for INEDS and communicate that this will be introduced within 3 years given the importance of independence to a sound corporate governance framework. The benefit of introducing this in Hong Kong which has a significant amount of long-tenured INEDS would be an opportunity to improve on board turnover and refreshment supporting greater quality independence of thought as well as enhancing board diversity.

To counterbalance the significant presence of block shareholders in Hong Kong introduce a rule to appoint a lead INED (who is not a tenured INED) as a requirement.

Implement a CP that requires the INEDS to meet at least twice a year.

Implement a requirement for boards to build a transition plan for all long tenured INEDS within 3 years.

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 recommend this should be a CP and not a RBP.

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?

Yes

Please give reasons for your views.

We recommend the inclusion of the proposed statement in Rule 13.92 rather than it being a note to this rule.

Go further by amending Rule 13.92 to make it a requirement that the issuer has a diversity policy that is applied right across the issuing company at all levels of the organisation and not just as this relates to the board (aligning this with the proposal in 6(b))

In addition, amend Rule 19.92 making it a requirement that the board must set measurable objectives to achieve gender diversity in at all levels of the organisation inclusive of the board and consider similar requirements with regards to diversity including race, ethnicity, sexual orientation and identify.

This risk in not implementing the recommendation in 6(b) in addition to what is recommended above is that issuers make only appoint one woman on the board to check a box taking the position of "one and done" which smacks of tokenism. The current proposal raises major concerns that issues will do no more than appoint a single board director which does not go far enough to address the current imbalance in the gender makeup of listed boards in Hong Kong.

Research supports that 30% diversity is the critical mass required for groups to stop considering women as a minority and instead normalise inclusivity in the way in which the board operates as a whole. This in turn minimises the risk of "group think" which results in stronger corporate governance. In addition to this, a more diverse board is more reflective of the actual marketplace where women make up a significant number of investment and consumer decisions.

With this in mind we recommend HKEX set targets of 30% in within 6 years with an interim target of 25% by 2025 (see 6(b)). This would see Hong Kong shift towards the gender participation profiles in other key markets such as Europe, UK, US and Australia.

These requirements on single gender boards should be made effective from 2022 as we hold the view that a 3 year transition plan is unreasonable given the depth of female talent available in Hong Kong.

If a transition period is introduced we recommend this should be no longer than 1 year and Rule 13.92 should be amended to reflect this, not just a statement of intent.

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)?

Yes

Please give reasons for your views.

In the last 9 years since Community Business starting putting the spotlight on the issue of women on boards, the representation of women on Hong Kong's blue chip boards has moved at a glacial pace from 8.9% in 2009 to 13.7% this year. This is despite concerted effort on a number of fronts, including the

30% Club, training programmes for aspiring female directors, the voluntary Code of Conduct adopted by leading search firms, the Code Provision on board diversity introduced in September 2013 and the requirement for issuers to have a diversity policy and guidance. In the same period, the percentage of female directors has more than doubled in the UK and Australia which had adopted similar “comply or explain basis’ approach when it comes to board diversity disclosure. In Australia, the Workplace Gender Equality Act 2012 further strengthened the disclosure obligations for companies with over 100 employees, which are now required to make annual filings on gender equality indicators. Clearly, much more needs to be done in Hong Kong which significantly lags behind other leading markets.

We recommend HKEX go beyond what is outlined in this review to drive greater gender diversity in Hong Kong by:

1. Require all issuers to achieve board diversity of 25% by 2025
2. Include guidance that if 80% of all issues fail to achieve this that HKEX introduce mandatory quotas with penalties imposed on those issuers who do not meet the above targets. In addition, raise this target in 2025 to 30% with a requirement that this be met by 2027
3. All issuers should have a diversity and inclusion policy that is applied at all levels of the organisation inclusive of the board and that this is included in an amendment to Rule 13.92. Without the appropriate diversity and inclusion strategy and policies in place for the entire company any gender targets will be difficult if not impossible to reach.
4. All issuers be required to establish metrics and measurable objectives to be able to demonstrate effective implementation of the policies and practices.
5. Issues should be required to disclose reporting on the above mentioned proposed changes in each board reporting period as follows:
 1. The measurable objectives set for that reporting period in terms of achieving gender diversity
 2. The companies progress against the targetted objectives
 3. The gender statistics of the board members as well as the gender participation at all levels of the organisation

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?

Yes

Please give reasons for your views.

We support this and recommend that the proposal is amended to ensure the issuers diversity and inclusion policy is applied across all levels of the organisation, including the boards.

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.

We support this recommendation and ask that HKEX ensures that any method of gender self-identification allows for non-binary options.

HKEX established a publicly available database that is updated quarterly to include the percentage of women on HSI boards; percentage of women appointed to new IPO's; percentage of women across all issuers, and a comparison of appointments of man versus female appointments to boards across the reporting period (number and percentage). It is also important that a summary of the directors background and skill set be provided in addition to gender as a consideration to further support diverse and inclusive appointments.

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.

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.

This should go further in that if Directors do not regularly attend scheduled board meetings this should be reported to the exchange and attendance reviewed as part of any re-election process.

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.

With Boards being responsible for evaluating any risks and determining the impact they should then have to disclose any material risk of a social or environmental nature inclusive of what the plans are to manage and rectify these risks.

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.

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?

Yes

Please give reasons for your views.

There is a growing body of international evidence that links gender diversity with better business performance. We believe that gender diversity is not only good for business, but it is critical to Hong Kong's competitive advantage. For Hong Kong to truly be "Asia's world City", Hong Kong employers must access the widest possible talent pool and create an inclusive culture for diverse talent, including women. Women are under-represented at top levels of Hong Kong companies, including at board level, and much more needs to be done to increase the pace of change.

Community Business's latest report into Women on Boards (Jan 2021) shows that women make up 13.7% of the board seats on HSI – a percentage that has remained stagnant for more than two years. Twelve out of 50 boards are all-male boards, making up 24% of the total. This compares to 20% in the previous year and 11.8% in the new appointments.

<https://www.communitybusiness.org/women-on-boards> were made to women, up from 6.8% a year earlier.

By measuring gender diversity as a tangible measure of diversity, companies will have valuable data with which to benchmark and to take action on creating an enabling environment and pipeline for female and other talent to advance. This will enable companies to reap the benefits that diversity of perspectives brings, such as greater creativity and innovation, more balanced decision-making, and enhanced corporate governance and risk management. There needs to be a way to hold leaders accountable as the current measures do not seem to be working.

Having a gender diverse board and organisation is not about optics, but solidifying your business. A board made up of different, even conflicting perspectives and life experiences encourage a culture of questioning and robust discussion. This will not only help to mitigate risks and strengthen governance but ensure a higher probability of business success. In these volatile and disruptive times, companies should demand a strong, diverse board that futureproofs their existence.

A concerted and collective effort is required by companies, governments, regulators, investors and other stakeholders to ensure that women are given equal opportunity to participate and serve in leadership roles in the board room, executive suite and management levels. This begins with a commitment to change and a bold admission from Hong Kong companies that diversity and inclusion are good for business and good for Hong Kong.

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?

Yes

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?

Yes

Please give reasons for your views.