

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.

Policies and processes cannot be fully effective without the right leadership. We expect the board not only to oversee the company's culture and conduct but also to set the tone from the top, to encourage the highest ethical standards, and to drive company values. We expect companies to be guided by a purpose that serves not only shareholders, but also other stakeholders, society and the environment.

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.

Conduct, culture and ethics, driven by leadership, are the overriding factors determining holistic returns. We expect companies to set and adhere to standards of ethical conduct through relevant policies and processes, including enforcing best practice anti-corruption and anti-bribery policies and processes. These should be overseen by the board with robust action taken where issues are identified. This, combined with clear cultural expectations and organisational measures, such as training and grievance mechanisms, provides the best possible defence against corruption and other unethical behaviour.

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.

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.

On all boards in Hong Kong, we expect a strong core of independent directors. This group should play an important role in guiding the board's decision-making, holding management to account, and in ensuring effective succession planning. It should be empowered to meet independently, including before and after board meetings, and should do so in practice. It should be granted unfettered access to members of management, information and resources as required.

We expect a healthy mixture of tenures on boards, including regular board refreshments. Boards should ensure membership of the board is frequently reviewed and refreshed, and that directors are elected and re-elected by shareholders on a regular basis to ensure accountability. Biographies for all directors should be provided to shareholders, indicating which are considered independent and the value that they bring to the board. This should be accompanied by an analysis of how the board as a whole displays the necessary skills, independence, diversity and other attributes to meet the company's evolving needs.

We advocate independent board evaluations, in line with the recommended best practice that the Hong Kong Stock Exchange has put in place since 2012. The board should adopt the best practice of conducting such an evaluation at least every three years with a skilled and independent facilitator. Such externally facilitated evaluation should supplement the annual evaluation conducted by the board, ideally led by the independent director.

The board evaluator should play a role in assessing and confirming that there is genuine independence of thought on the board as part of an evaluation of overall board effectiveness.

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.

We consider the overall composition of boards and recognise the value that long-serving directors can contribute. However, too many directors serving concurrently can increase the risk of groupthink and complacency. Regular refreshment of directors brings new perspectives and constructive challenge to the board.

We carefully assess the independence of directors who have served on the board for over nine years, often concluding that they cannot be considered independent. We agree that independent shareholders should have the opportunity to approve the election of long-serving INEDs, as their long tenure may compromise overall board and committee independence. When independent shareholders vote on the re-election of long-serving INEDs, it would help to clarify the threshold for approval.

In their disclosures, companies should clearly state which directors they consider to be independent, the criteria for determining this, and how they have reached their conclusion. Where INEDs have long tenure, companies should give specific reasons for keeping them on the board and provide concrete examples of how they exercise independent thinking and judgement.

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.

Companies should provide the rationale for nominating candidates, taking into account concerns that investors might reasonably have. These might include independence and tenure, particularly when directors have been on the board for more than nine years; if they have been on the board with a group of directors for a long time; or if a director's capacity to fulfil his or her obligations may be perceived to be declining.

In our view, many long-serving INEDs cannot be considered independent. As such, in situations where all INEDs are long-serving, we would welcome new independent directors to be nominated to the board in order to reach a board composition of at least one-third genuinely independent directors.

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 do not support the granting of incentive payments or share options to independent non-executive directors as these give rise to potential conflicts of interest and impair their independence. Our view is that INEDs should receive annual fixed pay. We accept companies choosing to pay independent non-executive directors' fees partly in companies shares, which should be retained for the duration of their service, but these should not have performance conditions attached and should not result in an independent non-executive director building a significant shareholding over time.

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.

In our view it is not possible to have a 'diverse' board that is single gender.

Advancing gender equality on boards, in company leadership and throughout organisations remains critically important, with many companies around the world still falling far short of equal representation.

Boards should seek diversity in its broadest sense to support high quality debate and decision making. Considering diversity of skills, experience, networks, psychological attributes and demographics (including gender, ethnicity, nationality, sexual orientation and age) will equip the board to effectively serve the company and its stakeholders.

We welcome the proposal but would also support further measures to improve board gender diversity levels, such as a minimum requirement.

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.

Where boards fall short on gender diversity, disclosing numerical targets and timelines can help directors to focus on this issue and build it into their succession planning. It also increases accountability for delivering on the targets. Such disclosure enables shareholders to understand the board's plans in this area, signalling that the board is committed to becoming more diverse.

We perform our assessment of diversity at both board and management levels to ensure that the leadership team has a suitable combination of talents. We expect boards to be comprised of at least 20% female directors by 2021, with a medium-term target of 30% by 2030.

In addition to gender diversity on the board, we expect companies to be able to articulate how they are growing the pipeline of female talent. This includes disclosing relevant key performance indicators (KPIs) and time-bound targets that support gender equality in senior management and across the workforce. We support the aspiration all levels of management and the wider workforce should broadly reflect the diversity of society.

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 think that a board diversity policy is only useful if it is effectively implemented. The board diversity policy should be used within the board's succession planning and should translate into a genuinely diverse and inclusive board. The board evaluator should play a role in assessing and confirming that there is diversity of thought on the board as part of an evaluation of overall board effectiveness.

We expect boards and management teams to monitor key indicators to assess the composition of the workforce and how the company's culture supports inclusivity. Where diversity is found to be lacking – for example, the under-representation of women or ethnic minorities in leadership positions or elsewhere across the organisation – we expect companies to develop time-based targets and initiatives

to address it. We expect them to carefully consider how these targets and initiatives can take into account the convergence of different dimensions of diversity and support those facing combined challenges, for example, the promotion of women of colour to leadership roles.

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.

Disclosing directors' gender information as part of the board composition profile on the HKEX website helps investors to have accurate information of issuer's boards and understand how the company is implementing its gender diversity policy.

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.

Our expectation within our own policy is that companies in Hong Kong should have a nomination committee that is majority independent. We expect the nomination committee to ensure that succession planning reflects the skill requirements of the board and promotes a board with high independence and diversity of thought.

We support HKEX's initiative to further enhance the transparency and independence of the INED nomination and appointment process by establishing a rule that the chair of the NC must be an INED.

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.

This measure is a positive step to improving shareholder engagement. Developing relationships of trust with long-term shareholders can be invaluable for boards, and we expect chairs and independent directors to make themselves available for engagement. A fully disclosed shareholder communication policy in combination with minority shareholders' access to board members, other than at annual general meetings, is a necessary feature of companies with good governance standards.

We also support HKEX's proposal to include guidance to issuers on writing the shareholder communications policy. We support the recommendation that issuers appoint a lead independent director, which we believe would provide investors with a valuable channel to communicate with the board. In our view, lead independent directors should have clearly defined responsibilities including:

- Leading the group of non-executive directors and functioning as a link between them and the executive directors;
- Consolidating the views of other board directors and acting as the main, constructive counterweight to the chair, executives and major shareholders on the board;
- Chairing meetings of non-executive directors;
- Playing a key role in board evaluation and shareholder engagement;
- Representing the interests and views of minority shareholders at board meetings;
- Ensuring that all directors are sufficiently well-informed to perform their duties; and
- Managing government investigations (if any) as a non-executive but informed director of the company.

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.

Investors review directors' attendance of board meetings when making voting decisions on the re-election of directors. We support the availability of timely attendance record to better assess the directors' commitment to the board.

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.

We support this proposal as long as there is still a requirement that NEDs are subject to retirement by rotation and shareholders' approval for re-election, as is currently the case.

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.

The board should demonstrate leadership on ESG issues. We support the principle that it should be involved in determining the materiality of various ESG issues to the business and effectively overseeing their management. Taking a responsible and long-term approach to social, ethical and environmental issues is critical to the creation and preservation of long-term value, and should be reflected in the company's purpose, strategy and culture.

Companies must identify and disclose the most material social and environmental issues for the company and its significant stakeholders. They must seek to address the associated risks and opportunities through their core business strategy and value proposition, rather than through adjacent initiatives. We expect boards and management to have oversight of material sustainability issues and to be accountable to shareholders for effectively managing the associated risks and opportunities. The issues include climate change, biodiversity, resource efficiency, human rights, human capital management, culture and ethical conduct, tax and audit. They are potential considerations, though the list is not exhaustive.

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.

We rigorously defend shareholder rights on behalf of institutional investors, including the right to receive good quality corporate reporting and material information on a timely basis, to propose shareholder resolutions and to vote at shareholder meetings.

Companies should ensure that climate-related risks are integrated into financial reports and accounts. The auditors should consider company relevant climate and energy related financial risks and assumptions, future plans (e.g. capital allocation, M&A, capital projects), compliance with laws and regulations and determine whether those risks are adequately disclosed in the financial statements.

We acknowledge issuers' concerns over the time and resources required for the preparation of both annual and ESG reports simultaneously. However, given the closer alignment of both reports, as recommended by the TCFD, we support 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 the Consultation Paper and whether it will give rise to any ambiguities or unintended consequences?

Yes

Please give reasons for your views.

1. On Page 43 (APPENDIX III-4), the 2nd paragraph:

“3. An issuer would be in breach of the Exchange Listing Rules if it deviates from a code provision but does not provide Considered Reasons and Explanation in the manner as set out above.”

We suggest moving this paragraph to come as the first point under ‘What is “comply or explain”’ or rephrasing it as the first point so that it clearly communicates the importance of complying with a code provision.

In addition, a table that summarises the definitions of terms such as MDRs, the Principles, CPs and RBPs, and outlines what is required of issuers and the intended purpose would be helpful for the readers. Providing the rationale behind RBPs in a summary table may also help issuers better communicate the RBPs internally and adopt them.

2. On Page 43 (APPENDIX III-4), the 4th paragraph states:

“... The board should be responsible for governance of ESG matters to ensure oversight of ESG matters, as well as assessment and management of material environmental and social risks. ...” and “... 董事會應負責環境、社會及管治事宜的管治以確保其對該等事宜有所監督，並對重大的環境及社會風險作出評估和管理。...” in Chinese version, which both sounds wordy and confusing.

We suggest changing the wording as follow:

“The board should be responsible for the oversight of ESG matters, as well as assessment and management of material environmental and social risks.” and

“董事會應對環境、社會及管治的事宜負起監督責任，並對重大的環境及社會風險作出評估和管理。” in Chinese version.

The new introductory paragraph under “Linkage between Corporate Governance and [...] (“ESG”)” should also mention governance risks not just environmental and social risks. It also says “Issuers are required to disclose environmental and social matters in ESG reports in accordance with the ESG Reporting Guide” and this does not mention anything about governance matters, which it should.

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.

Please refer to our corporate governance principles 2021 for Hong Kong and China in both English:

<https://www.hermes-investment.com/ukw/wp-content/uploads/2019/02/hermes-eos-corporate-governance-principles-china-and-hong-kong-jan-2019.pdf>

And Mandarin Chinese: <https://www.hermes-investment.com/ukw/wp-content/uploads/2019/02/hermes-eos-corporate-governance-principles-china-and-hong-kong-chinese-jan-2019.pdf>

Our further perspectives are highlighted in our white paper on board effectiveness, Guiding Principles for an Effective Board: <https://www.hermes-investment.com/wp-content/uploads/2020/04/guiding-principles-for-an-effective-board-april-2020.pdf>

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.

We support HKEX's proposal to implement the revised Rules and the Code for financial year commencing on or after 1 January 2022. We also encourage companies either to comply with the amended Code in Hong Kong or to fully explain their reasons for non-compliance. We recommend that companies assess any existing explanations to identify whether they continue to be fit for purpose. In addition, we discourage companies from using boilerplate explanations, or viewing explanations as a tick-box exercise. Instead, we encourage companies to use disclosure to create internal debate about the effectiveness of their governance arrangements and to provide meaningful explanations of how their board ensures the highest possible levels of governance. We expect clear and thorough explanations that reflect the changing circumstances faced by the company over the reporting period, especially when it comes to explaining board structures and composition that deviate from best practice.

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.

We believe this proposal should be implemented within the same timeframe as the other proposals, i.e., in the financial year commencing on or after 1 January 2022.