

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.

We agree with the proposal that an issuer's board should establish an appropriate culture to be in alignment with the issuer's purpose, values and strategy. The board should set the framework of values within which the desired corporate culture can evolve and thrive. The board will be able to demonstrate good practice in the boardroom and promote governance throughout the business by regular assessment and monitor the culture.

Culture is high on the agenda of regional regulators. Singapore and UK have each recently published guidance or consultation papers on how regulatory bodies will assess the effectiveness of the compliance programmes in cases where an investigative matter is triggered. The proposed CP is also consistent with the "Bank Culture Reform" initiatives introduced by the Hong Kong Monetary Authority to foster sound culture and values in financial institutions.

In view of the regulatory consensus, issuers in Hong Kong need to formulate ways of measuring their culture in conjunction with defining their purposes, values, and strategies. The world today, which includes financial markets, is filled with uncertainty, complexity, and volatility. Corporate culture can serve as a lighthouse to guide employees on how to respond to changes, risks, or obscure situations that are unable to be clearly defined under present policies and regulations. Responsible culture is no longer a "good-to-have", but critical for corporate success.

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 agree with the proposal to introduce a CP requiring the establishment of an anti-corruption policy, as anti-corruption is important in establishing a healthy corporate culture and fundamental to good corporate governance.

Based on the published "Report to the Nations: Asia-Pacific Edition" conducted by the Association of Certified Fraud Examiners in 2020, corruption is the most common type of occupational fraud, accounting for 51% of cases.

The requirement to establish an anti-corruption policy presents an excellent opportunity for issuers, if they do not already have one, to understand and evaluate their existing approach.

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 agree with the proposal to upgrade to the Recommended Best Practice to Code Provision as whistleblowing can be an effective way to detect frauds and deficiencies.

Effective whistleblowing programmes and reporting hotlines are important to building a culture where employees feel they can report incidents in a safe environment without fear of repercussions to their career.

The requirement to establish a whistleblowing policy presents an excellent opportunity for issuers, if they do not already have one, to understand and evaluate their existing approach.

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 agree with the proposal to introduce a Code Provision 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.

Such policy would promote transparency and accountability in how Independent Non-Executive Directors (INEDs) discharge their fiduciary duties.

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 do not agree with the proposal that re-election of Long Serving INEDs to be subject to independent shareholders' approval. We suggest re-election of an INED should be approved by all shareholders, as an INED serves all shareholders as a whole. With reference to listed companies in the United States, majority of the Top 100 US Companies require directors to be subject to annual elections and to be elected by a majority of votes casts. In other words, all shareholders are entitled to voting at annual election of directors.

According to the Consultation Paper, as of December 2020, 1,513 (17.8%) INED directorships (out of 8,498) were occupied by Long Serving INEDs. These directors sit across one-third (30.6%) of issuers listed on the Exchange. There were 153 issuers (6%) where every one of their INEDs had served nine years or more. We consider this issue is not too significant. We suggest this proposal to be classified as a Recommended Best Practice instead of a Code Provision at this stage but review the issue from time to time. In addition, we also suggest the requirements under the Hong Kong Listing Rules should benchmark those requirements under the listing rules of leading equity markets such as the United Kingdom and the United States.

In addition, we agree with the proposal that Additional Disclosure in the explanation on why such INED is still independent and should be re-elected.

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.

We agree with the proposal to introduce such a Code Provision as we support increasing transparency and addition of new blood on the board.

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?

No

Please give reasons for your views.

We do not agree with the proposal to introduce a new RBP that an issuer generally should not grant equity-based remuneration with performance-related elements to INEDs. We consider that equity-based remuneration can help attracting and retaining right talents, creating a sense of belonging and be positive to an issuer's cash flow management. In addition, under the Listing Rules, in assessing the independence of a non-executive director, independence is more likely to be questioned if the director holds more than 1% of the number of issued shares of the issuer. Therefore, the amount of equity-based remuneration could be made to an INED tends to be limited and not substantial. In fact, it is very common for listed companies in the United States granting equity-based remuneration to independent directors.

In addition, we suggest equity-based remuneration could be granted to INEDs with the approval by shareholders at AGM which is similar to the practice in other jurisdictions.

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 agree with the proposal to highlight that diversity is not considered to be achieved by a single gender board in the note of the Rule. It is a common goal to achieve gender equality the UN SDGs. However, diversity should be achieved in all forms including gender, social and ethnic backgrounds and personal strengths and skillsets of directors. Emphasis on a particular gender is not recommended. This would otherwise create a sense of discrimination against the male gender.

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 consider the requirements under current regimes (MB Rule 13.92 or GEM Rule 17.104) are adequate but issuers should be encouraged to make disclosures on their diversity policies on a comply or explain basis, such as objectives, targets and timelines of their diversity policies. We also suggest further guidelines could be provided to issuers so as to promote best practice disclosures on their board's

diversity policies and increase transparency.

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 agree that the board should review the implementation and effectiveness of its board diversity policy annually. However, we consider that some issuers may have some difficulties in achieving gender diversity in view of their business nature. Therefore, we suggest a certain degree of flexibility should be provided to issuers to achieve these targets and the introduction of a comply or explain approach may be more suitable at this stage rather than introducing a Code Provision.

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 agree with the proposal as this would increase transparency.

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 agree with the proposal to upgrade the Code Provision to Rule requiring issuers to establish a nomination committee chaired by an INED, as the nomination committee should comprise a majority of INEDs under the current provisions.

However, in view of the increased workload, we suggest the number of INEDs in the board should be increased and INEDs should comprise at least 51% of the board of directors.

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.

We agree with the proposal to upgrade a Code Provision to a Mandatory Disclosure Requirement as we consider shareholders communication policy should be spelt out to the investors.

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 with the proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements so as to improve transparency.

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 agree with the proposal to delete the Code Provision as a specific term seems not necessary for a non-executive director.

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 with the proposal to elaborate the linkage in the Code by setting out the relationship between corporate governance and environmental, social and governance (“ESG”) in the introductory section and including ESG risks in the context of risk management under the Code, as a measure to enhance corporate governance.

However, we suggest independent assurance on ESG report should be implemented in order to enhance integrity, reliability and market confidence on ESG data.

We also suggest ESG officer and ESG department should be established by all issuers in order to monitor the issuers’ ESG performance in an ongoing manner. As some issuers may not have adequate resources, issuers should be allowed to outsource these functions at the initial stage.

We also suggest the number of INEDs in the board of directors should be increased in order to cope with the increased responsibility and workload assumed on INEDs over the ESG data integrity.

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?

No

Please give reasons for your views.

We agree that it is a best practice for an issuer to publish ESG information simultaneously with its financial information.

However, in view of the requirements for an issuer to publish climate-related risks in respect of an issuer’s ESG information, we suggest a transition period, say two years, should be provided to issuers to cope the requirements.

In addition, we suggest independent assurance on ESG information should be implemented, so as to enhance market confidence over ESG data and to protect shareholders’ interests by eliminating inconsistencies between an issuer’s ESG information and financial information.

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.

Except for the areas that we have concern or disagreement on the questionnaire, we generally agree with the re-arranged Code.

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.

We suggest the number of INEDs should be increased so as to form at least 51% of the board of directors.

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.

We suggest more time, say a transition period of 3 years, should be allowed for issuers to resolve the single gender board issue and cope with the changes.

We, HKiNEDA, maintain a talent pool with some of our members' profile on our website. Issuers are welcomed to visit our talent pool to search for candidates when they recruit new INEDs with diversified gender and skillsets.

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 agree board refreshment and succession planning is important to an issuer's long-term and sustainable development. However, we suggest more time should be allowed for issuers to cope with the proposed changes and re-election of Long Serving INED should be subject to the approval by all

shareholders of the issuer rather than by the independent shareholders of the issuers only.