

### **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?**

**Please give reasons for your views.**

██████ is concerned that issuers will have difficulty with this requirement as culture is not an objective measure. We propose that the emphasis should be on conduct instead which is visible and measurable.

A code of conduct should be a mandatory requirement for issuers, together with a clear whistleblowing policy and provide avenues for employees to report breaches of code of conduct with no repercussions.

The board should also determine behaviours or conduct that align with the issuer's purpose, principles and values and set them out clearly.

### **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.**

- This should be a mandatory disclosure obligation.
- The whistleblowing policy should be required to be communicated, implemented, reviewed and measured for effectiveness
- Material breaches of the policy should be reported to the board so that they can address the breaches and to conduct assessments / adjust the policy to ensure its effectiveness
- Regular reviews of the policy (e.g. every 2 years) should be required

### **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.**

- This should be a mandatory disclosure obligation
- The whistleblowing policy must be clearly communicated to all employees of the issuer with examples of behaviour or conduct that are in violation of such policy. When implementing such policy, it is critical that employees are reassured that there will be no backlash to the whistleblower. The policy should be reviewed and measured for effectiveness regularly.
- The Audit Committee (or another majority-INED committee) should have the obligation to receive complaints / concerns, so that the committee can address the breaches and to conduct assessments / adjust the policy to ensure effectiveness.
- HKEX to consider whether larger issuers should establish an independent whistleblowing process with independent review / investigation of complaints.

**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.**

- This should already be part of the board's process, so should not impact the operation of an issuer's board in any way.
- It should be emphasised that the INEDs should be providing independent views to the board, not simply that the board can look externally for advice and satisfy this requirement.
- This should be in addition to the HKEX's continuing work to tighten up requirements on term limits and other measures to ensure independence 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.**

- Strict 9 year limits should be introduced, with no ability to extend. This will increase turnover of independent board members and aid in increasing board diversity and improve board quality.
- Consider introducing a CP requiring the appointment of a Lead INED (who is not a Long-Serving INED), with the role of the Lead INED being similar to that found in other jurisdictions.
- Consider introducing a CP for INEDs-only meetings a minimum number of times a year, for example at least twice a year.
- Separate disclosure of the independent shareholder vote on the re-election of all NEDs should be required, and issuers / boards should be required to explain the reasons for retaining any NED if there is no majority support from the independent shareholders for that NED.

**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.**

- Strict 9 year limits should be introduced, with no ability to extend. This will increase turnover of independent board members and aid in increasing board diversity and improve board quality.
- Consider introducing a CP requiring the appointment of a Lead INED (who is not a Long-Serving INED), with the role of the Lead INED being similar to that found in other jurisdictions.
- Consider introducing a CP for INEDs-only meetings a minimum number of times a year, for example at least twice a year.
- Boards should be required to outline their transition plan for Long-Serving INEDs to ensure minimum disruption and to demonstrate their intention to appoint new INEDs in future.

**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.**

- This should be a CP, not just 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.**

- Rule 13.92 should be amended such that the diversity policy is not limited to the board and senior management but also applicable across the issuer's organisation and operations, and to also require measurable objectives to be set to achieve such diversity (including other aspects of diversity such as age, race, etc)
- See also our response to Question 6(b)
- Requirements for single gender boards should be effective as soon as possible (i.e. once these proposals become effective) without any transition period. Considering the numbers of female talent in Hong Kong, there should not be any difficulty in appointing female board members.

#### **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.**

- Rather than requiring issuers to set their own targets (which could be set at very low levels - such as one female board member - and therefore be completely ineffective and tokenistic), the targets should be imposed by HKEX at levels of 25% or 30% (there is plentiful research on why 30% is often seen as a critical marker to set change). If issuers fail to meet such targets, penalties should be imposed.

- Rule 13.92 should be amended such that the diversity policy is not limited to the board and senior management but also applicable across the issuer's organisation and operations, and to also require measurable objectives to be set to achieve such diversity (including other aspects of diversity such as age, race, etc).
- Issuers should also be required to additionally disclose, for each reporting period, the measurable objectives set for that period, the progress made in achieving the objectives, and the gender composition of its board, management team and the entire workforce.
- The HKEX may also consider requiring salary / remuneration spread information based on gender to be included in such disclosure (akin to gender pay gap study).

### **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.**

- Rule 13.92 should be amended such that the diversity policy is not limited to the board and senior management but also applicable across the issuer's organisation and operations.

### **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.**

- Information should be extended to skill set.
- Gender information should include options for non-binary genders.
- The disclosure of the board related diversity information should be a searchable database, and also include aggregated information such as the numbers and percentage of women on boards of (1) companies in the Hang Seng Index, (2) all listed companies and (3) new IPO issuers, and also a comparison against the number and percentage of men appointed in each period.

### **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.**

#### **Question 10**

**Do you agree with our proposal to delete the CP that requires issuers to appoint non-executive directors for a specific term?**

**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.**

**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?**

**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?**

**Please give reasons for your views.**

**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.**