

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?

No

Please give reasons for your views.

We do not agree that this should be included as a CP. If it is to be included, it should be as a "Principle", not a CP. In addition, we respectfully submit that the proposed new CP A.1.1 contains a number of drafting errors, as noted further below.

We note that the Consultation Paper cites a number of international precedents as support for this proposal, and further note that the first two sentences of proposed new CP A.1.1. duplicate Principle B of the UK CG Code (save for the typo identified below), while the third sentence of proposed new CP A.1.1 largely duplicates ASX CG Code Principle 3 (save for the drafting issue identified below). However, we would observe that:

* The provisions in both the UK CG Code and ASX CG Code are in the nature of broad principles rather than specific "provisions" (UK) or "recommendations" (ASX) analogous to CPs in the Hong Kong CG Code.

* We further observe that while SGX CG Code provision 1.1 and JPX CG Code General Principle 2 contain reference to corporate culture as being among board responsibilities, they do so in a broader context and do not purport to regulate culture in the terms being proposed here.

In light of these international precedents and the specific regulatory framework in Hong Kong, we respectfully submit that if wording of this nature is to be included in the CG Code it is most appropriately included as a "Principle" rather than a "Code Provision".

While the sentiments expressed in this proposal are laudable, it is respectfully submitted that the attempt presented here to codify the issue of corporate culture results in a regulatory requirement which is vague, subjective and impossible for an issuer's legal and other professional advisors to advise an issuer on with any degree of certainty or objective clarity. It does not seem practicable for an issuer to address this proposed CP on a "comply or explain" basis, nor is it apparent to us as issuers' advisors how we would advise an issuer whether this provision, if presented as a CP, were objectively complied with. Accordingly we submit that this proposal should take the form of a Principle rather than a CP.

We further note that the drafting of the proposed CP A.1.1 appears to contain a number of errors. In particular:

* The first sentence of proposed CP A.1.1. contains a typographical error: “value” we believe should be “values”. We note that this sentence has been copied from Principle B of the UK CG Code which uses the word “values” here rather than “value”. We observe that the phrase “establish the issuer’s...value” does not make sense, whereas “establish the issuer’s...values” is consistent with the context of that sentence.

* The final sentence of proposed CP A.1.1 appears to be missing words, or in any event does not make sense as currently drafted: “Such culture should instill and continually reinforce across the organization [MISSING?] of acting lawfully, ethically and responsibly.” It would appear the missing words should be “a culture”, and we note that this sentence has been adapted from ASX CG Code Principle 3, which indeed uses the word “culture” here: “A listed entity should instill and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly.” Again, we would suggest the drafting be rectified so that the sentence makes grammatical sense. If the ASX drafting is not adopted in toto, it will be necessary in the existing drafting to add an alternative word to “culture” – we would suggest “values” – to avoid the sentence containing the word “culture” twice, i.e. “Such culture should instill and continually reinforce across the organization values of acting lawfully, ethically and responsibly.”

We further note the proposal in paragraph 54 of the Consultation Paper to require issuers to make certain disclosures on the “vision, value (sic) and strategy of the company, alongside with (sic) the company’s culture”. We disagree with this proposal, which we consider would merely lead to generic disclosures, lacking in precision and of limited utility to investors.

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.

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?

No

Please give reasons for your views.

We do not consider this proposal will be meaningful in enhancing board independence. We support the Exchange's aim of enhancing board independence, which we consider would be the single most important step in enhancing corporate governance in Hong Kong, and submit that this would be best served by adopting one or more of the following proposals:

1. requiring that the chairman be an INED (or, in the alternative, to require the appointment of a "senior INED"); and/or
2. requiring that a board of directors comprise a majority of INEDs.

This is consistent with the prevailing practice in other international jurisdictions.

It is submitted that the Exchange should engage in a market consultation on these proposals, which would produce genuine and meaningful reform in relation to board independence.

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.

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.

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 consider that equity-based remuneration continues to be an important means of ensuring alignment between the interests of shareholders and all board members, including INEDs. We do not believe that equity-based remuneration leads to or gives the impression of bias in the decision-making of INEDs. We further note that:

- (1) the current rules already contain an exhaustive set of criteria to ensure INED independence;
- (2) Chapter 17 of the Listing Rules explicitly permits the grant of share options to INEDs, for example as contemplated in Listing Rule 17.04(1). This proposal would therefore result in the Listing Rules being internally inconsistent on this issue.

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, however we consider the drafting of the proposed rule is insufficiently clear, and the proposal does not go far enough.

If the Exchange intends to implement a policy mandating that a single-gender board is not permitted – and we note that the Exchange has been effectively implementing this policy in practice in respect of IPO applicants, even in the absence of any clear regulatory requirement – the rule should specifically state such requirement in unambiguous terms. For the avoidance of doubt, we support such a proposal.

However, we believe that the requirement should go further. We submit that the Exchange have reference to the recently proposed Nasdaq “Proposal to Adopt Listing Rules Related to Board Diversity” which will required issuers on a “comply or explain” basis (i.e. equivalent to a CG Code CP) to have “at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+”.

Accordingly, we would submit that – either Listing Rule 13.92 or a CP to the CG Code – should state clearly that:

1. an issuer must have at least [one] “diverse” director; and
2. existing listed issuers which do not currently comply must bring their board into compliance within a specified timeframe (for example, the first annual general meeting after 1 January 2023).

If the Exchange feels that such a proposal would receive resistance in the market, the Exchange could permit an issuer that is unable or unwilling to comply to have this ratified by a separate shareholder vote at each AGM.

Finally, we note that neither “race”/“ethnicity” nor LGBTQ+ identity are mentioned in the list of diversity factors included in the note to Listing Rule 13.92. (Race is referred to only using the coy term “cultural background”.) We respectfully submit that this is anachronistic and should be rectified as a matter of priority, with all of these factors recognised as diversity factors, if the Exchange is to be seen as addressing diversity seriously and consistent with contemporary global values.

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.

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.

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.

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?

No

Please give reasons for your views.

While we agree with the proposal for issuers to disclose their shareholder communication policy, we do not consider it appropriate or necessary to require disclosure of “steps taken to solicit and understand the views of shareholders and other stakeholders” as set out in proposed MDR L(b). We further consider that the requirement in proposed MDR L(c) will result in generic disclosure which will not contain meaningful information for investors. It is submitted that the existing provisions of the CG Code on this issue are sufficient.

We disagree with the premise of this proposal that issuers should maintain active and meaningful “two way communication” with shareholders. We submit that it is impracticable for issuers to achieve this at scale – particularly where the shareholder base is large – without necessitating a disproportionate and unduly burdensome expenditure on investor relations staff and infrastructure. We further consider this premise contrary to the fundamental principle that a board should be permitted to manage the company on behalf of shareholders free from interference, pursuant to the “business judgment rule”.

We are also concerned that encouraging listed issuers to engage in “two way communication” with shareholders on an individual basis – as opposed to through proper channels of information disclosure to the market – may encourage issuers to engage in selective disclosure to individual shareholders and/or unequal dissemination of information, tending to lead to a false market in the issuer’s securities.

Accordingly, we are of the view that this proposal should at most be limited to requiring issuers to disclose their shareholder communication policy and channels for shareholders to communicate with the issuer, i.e. the first portion of proposed MDR L(b) only, and omitting (c).

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?

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?

No

Please give reasons for your views.

We do not agree that the linkage between the Code and the ESG Guide requires elaboration, and if it did require elaboration we do not consider that the proposed addition in (a) fulfils that purpose.

The proposal to address the issue in (b) by adding specific references to ESG risks appears anomalous in that it singles out ESG risks while remaining silent on the many other risks that will also be relevant in this context. We submit that a more appropriate approach would be to set down a more complete list of the kinds of risks issuers are expected to address, which will include ESG risks as well as other risks the Exchange should specify. We also respectfully submit that the inclusion of the parenthetical "including ESG risks" in CP D.2.3(a) and (b) is inelegant drafting and disproportionate to the perceived issue it is seeking to address.

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?

Yes

Please give reasons for your views.

We respectfully submit that it is counter-intuitive for the Corporate Governance Report MDRs to be placed before the Corporate Governance Code in the re-arranged Appendix 14.

We would submit that the previous arrangement, with the CG Code first and the MDRs second is more appropriate, both chronologically and logically, as well as from the point of view of good drafting:

* Chronologically and logically, an issuer must first have regard to the provisions of the CG Code in terms of putting in place the necessary corporate governance structure and complying with the requirements of the CG Code (whether during the IPO preparation process or during the financial year of operations), before then turning to reporting on those matters in the CG Report at the end of the financial year. Therefore, chronologically, issuers and their advisors have cause to refer to first to the CG Code, and only subsequently to the MDRs. This logic suggests that the CG Code should be placed before the MDRs in the Appendix.

* There are several points in the MDRs that cross-refer to requirements set out in the CG Code. As a matter of good drafting, clarity and readability would be improved if these cross-references “refer back” to material that has already preceded in the Appendix, rather than to “refer forward” to material that has not yet been presented.

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?

No

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.