

HKEX – Review of Corporate Governance Code and Related Listing Rule – April 2021.

Link to full paper [here](#).

Given the breadth of the Consultation Paper, responses to the Consultation Paper are submitted by four committees of the British Chamber of Commerce in Hong Kong, namely, CSR Steering Group (CSR); Environment and Energy Committee (EEC); Women in Business Committee (WIB) and Financial Markets Committee (FMC).

Response to paper

PART I: Corporate Governance

1. Culture

A. Introduce “culture”

Question 1 Do you agree with our proposal to introduce a CP requiring an issuer’s board to set culture in alignment with issuer’s purpose, value and strategy?

We partially agree with this proposal in principle but recognise that the implementation and monitoring of such a CP may be challenging. That said, we believe it is an important message for HKEX to be sending out from a diversity and inclusion perspective and generally in terms of creating a more transparent, ethical and harmonious workplace. By requiring issuers’ boards to set culture in alignment with issuers’ purpose, value and strategy, issuers will need to make culture a talking point and agenda item of board meetings, which should then open dialogue on the importance of culture within the issuer and may lead to better D&I initiatives, more balanced views, improve attraction and retention of talent and improve governance of the issuer.

Note we presume that this section should in fact be making reference to values (i.e. the set of guiding beliefs upon which a business is based), rather than value (i.e. a monetary amount), so the following is based on the question being amended to make mention of values instead of value.

We agree with the proposal to introduce a CP requiring an issuer’s board to set culture, we suggest refinements to what is proposed as follows:

- The proposals should make clear the change from the emphasis in the current requirements of 2018 Guidance (per para 45) being on “issuer’s risk culture” i.e. this new proposal is much broader in scope.
- The proposals should not make specific mention of “purpose, values and strategy” since not every company will have this mix and structure of strategic tools and concepts to align their operations – one size does not fit all. It is not unusual for entities to use different combinations of the following: vision, mission, credo, values, intentions, promise, motto, compass, beliefs, pledge, manifesto, purpose, charter, blueprint, mantra, principles, among others. This is shown in the following examples, of different ESG leaders in Hong Kong:
MTR – purpose, vision, values <https://www.mtr.com.hk/purpose-vision-values/en/index.html#:~:text=We%20create%20profit%20and%20community,execution%20%20continuous%20improvement%20and%20innovation.>
Link REIT – vision, mission, values <https://www.linkreit.com/en/about-us/our-vision/>
CLP Group – purpose, values, strategy, governance <https://www.clpgroup.com/en/about/overview/our-purpose.html>
Swire Properties – vision, values <https://www.swireproperties.com/en/about-us/our-vision-and-values/>

B. Anti-corruption and whistleblowing policies

Question 2 Do you agree with our proposal to: (a) introduce a CP requiring establishment of an anti-corruption policy; and (b) upgrade a RBP to CP requiring establishment of a whistleblowing policy?

We agree with (a) and we note that many multinationals and financial institutions already have such policies in place. Having a clearly articulated policy, which is then properly implemented, will assist staff to understand senior management expectations and comply with relevant anti-corruption laws.

We agree with (b) in principle. However, as with all policies, implementation is key. Whistleblowing staff should not be subject to retaliation, harassment, intimidation and the tone on the protection of whistle-blowers should be clearly set out by the board of directors. We suggest that, if this CP is issued, that HKEX needs to consider what further steps are necessary to make this policy effective in practice, in particular, to consider if the INEDs should take an active part in implementing and monitoring observance with the policy.

2. Director's independence

A. Enhance board independence

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?

We agree. We would also suggest that HKEX look beyond the granular requirement of "independence" of INEDs and consider the broader issue of the quality and diversity of INEDs. For example, a starting point can be to work with the Hong Kong Independent Non-Executive Director Association to establish some training courses for INEDs and, in due course, to offer more intensive accreditation courses.

B. Board refreshment and succession planning

Question 4(a) Do you agree with our proposal regarding re-election of Long Serving INEDs to revise an existing CP to require (i) independent shareholders' approval; and (ii) Additional Disclosure?

We agree with this proposal on the basis that revising the existing CP in this way should force issuers to consider more carefully the re-election of Long Serving INEDs. Currently, one third (30.6%) of issuers listed on the HKSE have INEDs serving for longer than 9 years and for 153 issuers (6%) all of their INEDs have served for 9 years or more. To ensure independence of INEDs and to help create more opportunities for diverse candidates to apply for INED positions (including more women), the re-election of INEDs should be dissuaded, other than in exceptional circumstances. We would ideally like HKEX to consider reducing the maximum tenure of the first term of an INED to below 9 years in order to create even more opportunities to bring diversity to the board, but appreciate that this may be a next step in due course. In addition, we would ask the HKEX to consider a rotation of Long Serving INEDs, similar to rotation of auditors, in due course as a next step.

Question 4(b) Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new INED at the forthcoming AGM where all the INEDs on the board are Long Serving INEDs, and disclosing the length of tenure of the Long Serving?

We agree with this proposal as it should create opportunities for more diversity on boards and should also assist with improving the independence of the board from a governance perspective. Shareholders should be made aware of the length of tenure of Long Serving INEDs so that they can make more informed decisions as to whether to retain/ re-elect those INEDs going forward or choose to bring in new INEDs and with them fresh perspectives, diverse views, greater scrutiny and challenge of directors, etc.

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?

We agree that equity-based remuneration for INEDs is not appropriate; remuneration should remain fee-based. However, the current levels of remuneration for INEDs seem to be low and may discourage well-qualified professionals from becoming INEDs. We suggest that the HKEX carry out a survey of INED remuneration of other major international financial centres and encourage Hong Kong listed companies to adjust their remuneration policies accordingly.

3. Diversity

Question 6(a) 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?

WIB agree with this proposal; however, we would ask that HKEX includes this statement in the Rule itself rather than in the notes to the Rule in order to give it the prominence and regulatory impact it needs. We would also ask that the requirements on single gender boards be made effective from 2022 as a transition period of three years is too long and unnecessary given the breadth of female board-ready talent in Hong Kong.

Question 6(b) Do you agree with our proposal to introduce a 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)?

WIB agree with this proposal but, in order for these targets and timelines to be meaningful, HKEX may wish to consider introducing penalties for those who fail to reach their targets within their timelines or, alternatively, HKEX could publish these targets and timelines and require issuers to provide an annual report on how they have performed against those targets which will also be made available to the public.

WIB would further support the introduction of quotas in the event that this MDR was not effective in achieving its aims within a few years of its introduction. We would suggest that a realistic quota would be for issuers' boards to achieve 20% of their boards being female by 2025, 25% by 2027 and 30% by 2030.

We are supportive of HKEX's proposal for the targets and timelines to be across the workforce as well as the board because in order to increase the percentage of women on boards there must be

a pipeline of strong female talent ready to take those board positions when they arise; setting board targets is meaningless without considering the workforce below the board and how to improve its gender composition.

In time, we would ask HKEX to widen the scope of this MDR/quota system in order to consider diversity more broadly in relation to race, disability, etc.

Question 6(c) 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?

We agree with this proposal as it should force issuers to consider their board diversity policy on a regular basis throughout the year and make them accountable for achieving the objectives set out in that policy. We would ask HKEX to widen this CP to include: (a) requiring issuers to have a diversity policy applicable to the entire workforce and (b) requiring the board to review the implementation and effectiveness of the issuer's workforce diversity policy annually.

Question 6(d) Do you agree with our proposal to amend the relevant forms to include directors' gender information?

We would expand the proposal beyond gender, and include ethnicity, religion, etc. We recognise that gender is a clear yardstick by which to assess diversity, but we should not be confined to gender only and we suggest that HKEX consider the variables that are relevant to the make up a diverse board in the context of Hong Kong as an international financial centre.

4. Nomination committee

Question 7 Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a NC chaired by an INED and comprising a majority of INEDs?

We agree.

5. Communications with shareholders

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?

The role of an Investor Relations ("IR") Department is to provide shareholder communication; HKEX should consider how this proposal will work with established IR functions. We also suggest that HKEX look specifically at how communications to retail investors can be enhanced and for directors to provide meaningful analysis (for example, of the items stated in paragraph 100 of the consultation paper) rather than provide reams of information without context or analysis.

6. Other enhancements

A. Timely disclosure on directors' attendance at general meetings

Question 9 Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements?

We agree.

B. Disclosure on AC's work

No question in the paper.

C. Deletion of the Specific Term CP

Question 10 Do you agree with our proposal to delete the CP that requires issuers to appoint NEDs for a specific term?

We agree.

Part II: ESG

A. Elaborate the linkage between CG and ESG

Question 11 Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between CG and ESG in the introductory section; and (b) including ESG risks in the context of risk management under the Code?

a. Agree

This will serve to clarify the meaning and relationship of CG and ESG. Currently the explanations and interpretations over CG, E and S or other governance areas are not clear and often interpreted in different ways.

b. Agree

This will serve to give ESG an official home and clear responsible person/team at board level, which will support the board deliver on their fiduciary duties plus ensure ESG risks – and opportunities – are systematically given due consideration at the highest level, which is in keeping with the ESG Guide that is applicable at present.

B. Timely disclosure of ESG reports

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?

Agree (for the reasons set out in para 123).

Also this alignment on the timing of publication will:

- i. support the inevitable combining of financial and sustainability reporting that is sure to happen in due course;
- ii. also address the current gap in linking ESG and financial results that is evident now in the investors relation function and communications. Issuers in Hong Kong are prone to emphasising financial results and forecasts in investor communications and omit risk/opportunity/ value creating opportunities such as those presented by ESG. Publication of the two reports – financial and sustainability – at the same time will better facilitate a more integrated and comprehensive, hence more meaningful conversation/ engagement encompassing financial and other value impacting aspects.

PART III: CG CODE STRUCTURE

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 this paper and whether it will give rise to any ambiguities or unintended consequences?

No comments.

Question 14 In addition to the topics mentioned in this paper, do you have any comments regarding what to be included in the CG GL which may be helpful to issuers for achieving the Principles set out in the Code?

No further comments beyond what was mentioned in questions 1, 3 and 4(a).

PART IV: IMPLEMENTATION DATES

Question 15 Do you agree with our proposed implementation dates of: (a) for all proposals (except the proposals on Long Serving INED): financial year commencing on or after 1 January 2022; and (b) for proposals on Long Serving INED: financial year commencing on or after 1 January 2023?

Yes. This implementation of all the proposals sooner the better thus we agree with the proposed implementation dates.