

17 June 2021

By Email

Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited

Re: Consultation Paper on Review of Corporate Governance Code and Related Listing Rules CP (the “Consultation”)

CLP Holdings Limited (“we” or “our”, as the context requires) have considered the Consultation and our responses to the Questionnaire on Review of Corporate Governance Code and Related Rules CP are attached to this letter. In addition, there are various questions in the Consultation Paper that we would like to elaborate in this letter as a response of “yes” or “no” may not be able to sufficiently reflect our views on those issues.

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?

We acknowledge that the culture of an organisation is an integral part of the corporate governance ecosystem and that the board has a vital role to play in this. Given the importance of this, the proposed requirement for an issuer to “set” its culture in alignment with the issuer’s purpose, value and strategy could be too easily fulfilled by a simple statement and could well become a box ticking exercise. We believe what would be more meaningful and appropriate would be to encourage the issuer’s board to discuss how the board is seeking to understand, and to monitor, the culture across the organisation and how the organisation goes about in ensuring that the right behaviour in line with the issuer’s culture is being encouraged.

We understand the intent behind the proposed regulatory guidance, however, the proposed requirement to set the culture could potentially lead listed issuers into a box ticking exercise; we are of the view that a comprehensive and progressive approach should be adopted beginning with thought leadership, training and education for listed issuers before the introduction of specific regulatory requirements on this issue.

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 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?

- (a) We agree with the proposed requirement for an independent shareholders' approval.

We maintain the view that independence is a question of fact and a matter of mindset and that tenure alone is insufficient to determine loss of independence. However, the proposed requirement strikes a reasonable balance by avoiding an absolute categorisation of loss of independence based purely on time and instead, requiring boards and Long Serving INEDs themselves to undertake a more rigorous assessment as to whether a Long Serving INED should continue to be regarded as independent despite the passage of time. The standard required is that which would be necessary to garner sufficient support from independent shareholders of the relevant company which, while not a pure approach from a shareholder rights perspective, is a pragmatic one appropriate to the circumstances. For long serving directors that the board believes continue to add significant value to the issuer but for whom there is an insufficient case to support independence, there is still flexibility to reclassify that director as a non-executive director and retain them on the board in that capacity if appropriate.

We believe this mechanism would assist in breaking down the inertia in board composition that can develop over time by requiring a more rigorous assessment of independence and, in turn, whether a Director should continue to serve on such a board. This would also prompt discussion on board refresh and succession planning, which in turn would facilitate advancement of other policy objectives such as diversity.

- (b) We also agree with the proposed requirement for additional disclosure. We believe that the requirement should encourage disclosure of a more complete explanation of the underlying reasons and rationale considered by the issuer's board or nomination committee as to why a Long Serving INED would continue to be regarded as independent. This is also likely to be necessary in any event in order to secure the necessary support of independent shareholders to the re-election of the Long Serving INED.

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?

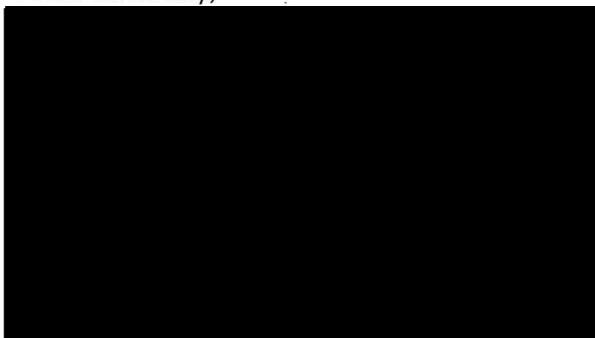
We believe that diversity is much broader than a statement or reference that a single gender board would not be regarded as diverse. This proposal sets the bar too low. While we understand the objective, we believe that the proposed requirement if left as it is currently proposed would potentially send a questionable message as to what would be regarded as a meaningful level of diversity. It would be better for the reform to also require issuers to go on to specify and set out other aspects of diversity that the board should be seeking to enhance, for example, age, professional experiences, individuals' skills and knowledge, cultural background, ethnicity and length of service. For gender specifically, it would be preferable to include an additional requirement that issuers describe the steps that they will be taking to increase gender diversity and the targets that they are setting to measure progress.

Question 6(b) 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)?

- (a) We agree that all listed issuers should set and disclose numerical targets and timelines for achieving gender diversity at the board level. Furthermore, we believe that the time has come for Hong Kong to consider specific quota requirements on the issue of gender diversity, given the distinct lack of meaningful progress in this area over the years. At a minimum, the proposed requirement should set a minimum target for gender diversity with a clear timeline for how that will be increased in subsequent years, failing which specific quotas would be introduced. Issuers should also be required to disclose the steps being taken to meet the targets and to remove obstacles to their achievement along with the internal governance mechanisms and board oversight of this work.
- (b) We do not agree that numerical targets and timelines should be set for “across the organisation”, however, we are supportive for such targets to be set for selected functions, or particular level(s) of the organisation. The rationale is that depending on the nature of the business, profession or field of expertise, there are unique challenges on the issue of gender diversity and setting an universal target would not be meaningful and appropriate in the circumstances. We believe that listed issuer should be encouraged to set target(s) for specific guidelines or selected management team(s). As with the recommendations in relation to board diversity, it would be helpful for issuers to be encouraged to disclose the steps being taken to meet the targets and to remove obstacles to their achievement (such as initiatives to support a strong pipeline of suitable candidates).

We thank you for the opportunity for us to express our feedback on the Consultation.

Yours faithfully,



Part B Consultation Questions

Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/March-2021-Listing-Regime/Consultation-Paper/cp202103.pdf>. Please indicate your preference by ticking the appropriate boxes.

Where there is insufficient space provided for your comments, please attach additional pages.

We encourage you to read all of the following questions before responding.

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

No

Please give reasons for your views.

See detailed response

- 2(a). Do you agree with our proposal to introduce a CP requiring establishment of an anti-corruption policy?

Yes

No

Please give reasons for your views.

However, one would query the need for this, as anti-corruption is such a fundamental area of compliance that it would be akin to saying that a listed company has a policy of full compliance with all laws and regulations.

2(b). Do you agree with our proposal to upgrade a Recommended Best Practice ("**RBP**") to CP requiring establishment of a whistleblowing policy?

Yes

No

Please give reasons for your views.

This would make clear the availability of such a whistleblowing channel to both potential internal and external whistleblowers.

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

No

Please provide these other standards with reasons for your views.

This would reinforce and foster a healthy Board dynamic.

4(a). 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

No

Please give reasons for your views.

See detailed response.

4(b). 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

No

Please give reasons for your views.

See detailed response.

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

No

Please give reasons for your views.

This would ensure one's independence would not be called into 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?

Yes

No

Please give reasons for your views.

See detailed response.

6(b). 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

No

Please give reasons for your views.

See detailed response.

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?

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

No

Please give reasons for your views.

A strong level of independent oversight on matters of nomination, succession planning at the Nomination Committee is fundamental to the function of this Committee.

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

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

Yes

No

Please give reasons for your views.

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

No

Please give reasons for your views.

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

No

Please give reasons for your views.

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

No

Please give reasons for your views.

The revised form is reasonably clear to follow and should be viewed as an improvement.

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

No

Please give reasons for your views.

One point that should be made very clear is the importance of Corporate Governance that should be viewed and regarded as an enabler of long term value creating and as mechanisms for protecting the value of a company especially in challenging times or times of crisis. This would, hopefully, encourage meaningful initiatives to be undertaken rather than approaching the proposed changes as box-ticking measures.

- 15(a). 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

No

Please give reasons for your views.

15(b). 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

No

Please give reasons for your views.

- End -