

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.

Answer: unanswered

We find that the right order to strengthen corporate governance should be to require issuers to clearly define their purpose, value and strategy and articulate how internal guidance and policies reflect such. Corporate culture is an abstract concept difficult to define otherwise than by example with reference to companies such as Apple or Bridgewater.

The CG Code should provide a framework for:

- issuers to articulate their purpose, value and strategy;
- explain how internal guidance and policies reflect such, including anti-corruption and whistleblowing policies;
- measure the compliance with those internal guidance and policies
- reassess the above periodically and at least every two years.

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.

Listed companies should be exemplary in terms of compliance and HKEX role is to ensure they do. We urge HKEX to:

- upgrade this CP to a mandatory disclosure obligation and add a requirement that the policy be communicated, implemented, reviewed and measured for effectiveness;

- add a requirement that material breaches of the policy be reported to the board in order for the board to address material issues and incidents quickly as well as assessing the effectiveness of the policy and make adjustments if required;
- add a requirement that the policy be reviewed on a regular basis and at least every two years.

In addition, the CG Code should provide a framework to ensure the relevance of the policies. The French agency against corruption (AFA) provides very interesting guidance on its website, including in particular the requirement for a risk map regularly updated to identify risks of corruption based on the geographical scope where the company is doing business and the business sector.

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.

The effective protection of whistleblowers requires strong protective measures which should include systematic independent review of complaints.

In addition, we urge HKEX to:

- upgrade this to a mandatory disclosure obligation and add a requirement that the policy be communicated, implemented, reviewed and measured for effectiveness;
- add a requirement that complaints be reviewed by a person or entity independent from the board;
- add a requirement that the policy and system be reviewed on a regular basis and at least every two years.

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.

Independent views and input should be obtained from INEDs and we urge HKEX to continue to strengthen requirements in relation to INEDs including term limits rather than explore independent input and views from non-board members which risks diluting the role and importance 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?

No

Please give reasons for your views.

Answer: Unanswered

The majority rules in the Companies Ordinance should not be tampered with.

In addition, we urge HKEX to introduce time limits for INEDs. Given the large number of Long Serving INEDs introducing time limits will enhance turnover and board refreshment which will aid board diversity and improve board quality.

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.

INEDs statutory rotation shall reduce the risk of complacency.

In addition, we urge HKEX to introduce time limits for INEDs. Given the large number of Long Serving INEDs introducing time limits will enhance turnover and board refreshment which will aid board diversity and improve board quality.

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.

INEDs should be adequately compensated. Transparency and alignment with the issuer's long-term interest should be key criteria and the allotment of shares would be suitable in most cases, in a similar way to employees share option plans.

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.

HKEX should strive to introduce and uphold international corporate governance standards. With this regard, we endorse the propositions of the 30% Club and The Women's Foundation quoted below.

In addition, we urge HKEX to:

- include the proposal in Rule rather than in the note of the Rule;
- highlight that diversity is not considered to be achieved by a single gender workforce (including senior management) to align with proposal 6(b).
- lower the three-year transition period to six months.

Propositions of the 30% Club and The Women's Foundation:

- Include the proposed statement in Rule 13.92 rather than in the notes to this rule.

- Amend Rule 13.92 to require an issuer to have a diversity policy that is applicable across the issuer i.e. throughout the organisation (board, management, senior management and workforce generally) and not only in relation to the board (to align with proposal 6(b)).

- Amend Rule 13.92 to require the board to set measurable objectives for achieving gender diversity in the composition of its board, management, senior management and workforce generally and give consideration to these requirements for other aspects of diversity including race.

- Implement our recommendations in 6 (b) along with the above changes otherwise there is a wholesale risk that issuers will only appoint one woman per board to meet the above requirement which is in effect “a quota of one” and appears tokenistic. We have serious concerns that as currently proposed the consequences will mean issuers will take a limited approach by appointing a single female board director

- We talk about 30% diversity because evidence demonstrates that this is the required critical mass for groups to stop thinking about having a “minority” of women and instead think inclusively about the board as a whole, operating together regardless of gender. It helps erode homogeneity and ultimately promotes better governance. As such, we urge HKEX to set targets of 30% within six years with an interim of 25% by 2025 (See 6(b)) which will also bring Hong Kong into alignment with other key markets such as U.K, Europe, U.S and Australia

- Requirements on single gender boards should be effective from 2022 (or as soon as the new proposals are effective) as a transition period of 3 years is far too long given the breadth of female talent in Hong Kong

- If HKEX does introduce a transition period, we recommend a 1 year maximum and this must be included in Rule 13.92 or another regulation rather than a statement of intention only

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.

(a) board level

Introducing numerical targets and timelines create real objectives for companies and encourage a real evolution in diversity.

France provides an example of an effective policy. Since 27 January 2011, the law requires listed companies' boards to be composed of at least 40% of women . This rule also applies to companies with more than 500 employees and a turnover of more than 50 million euros. If the concerned companies do not respect the quota, every new non-compliant board nomination will be cancelled.

It was a progressive evolution: companies first had three years to have at least 20% of women on their board, and it's only after six years that they were supposed to comply with the 40% quota. Ten years after the establishment of this law, it's a real success for the biggest companies: the CAC40 and SBF120 companies count respectively 44,6% and 45,6% of women in their board.

In addition, we urge HKEX to require issuers to achieve gender board diversity of at least 40%, within six years.

(b) across the workforce (including senior management)

Introducing numerical targets and timelines create real objectives for companies and encourage a real evolution in diversity.

In addition, we urge HKEX to set and disclose targets in terms of equal opportunities, to allow a better gender diversity within the whole company.

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.

Increased transparency increases accountability.

In addition, we urge HKEX to establish public database that includes relevant analysis on boards gender diversity.

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?

No

Please give reasons for your views.

unanswered

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.

Increased transparency increases accountability.

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.

Increased transparency increases accountability.

Question 10

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

No

Please give reasons for your views.

Terms should be considered when appointing both NEDs and INEDs as statutory rotation shall reduce the risk of complacency.

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.

ESG performances are increasingly taken in consideration by investors internationally.

In addition to the board being responsible for evaluating and determining the nature and extent of risk there should be a specific requirement for the board to disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks.

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.

Simultaneous publication emphasizes the importance of both reports.

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?

No

Please give reasons for your views.

no comments

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.

no comments

Include any additional comments. TWF will include additional aspects in relation to gender diversity

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?

No

Please give reasons for your views.

All proposals should be implemented for the financial year commencing on or after 1 January 2022.