

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?

Yes

Please give reasons for your views.

A company has its own value, mission and objectives in a society, and from time to time its culture would also form and be created by the founder during the development of the company.

A company that is going to be listed is at an appropriate stage to strengthen and promote its culture that is embedded with corporate governance and risk management. In particular, an issuer to be listed has to take care of public shareholders' interests and a set culture would assist the compliance of the issuer.

Culture is also a long-lasting element of the company, which does not change easily or change in a short period. Investors can know about the company through the expression of the company culture in (i) statements (like the Chairman Statement) or (ii) publications and website of the company.

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.

We agree that the issuer should establish the anti-corruption policy and suggest the said policy to be uploaded on the Company's website in order to establish a healthy corporate culture. We also look forward to the HKEX's view on the relationship between the anti-corruption policy and the whistleblowing policy, in particular, whether it is the responsibility of the audit committee or another committee to be in charge of these two policies. With all these committees, the independent non-executive directors ("INED") will take more risks and duties.

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?

Yes

Please give reasons for your views.

We agree the importance of independent views and input given by the INEDs in the board discussion and decision. With the introduction of such CP, INEDs can rely on the policy or use it as a basis to make active contribution to the board of directors. The HKEX should provide more guidance on how to conduct the annual review (e.g. is it necessary to have diverse views for the HKEX to view the policy as being effective?)

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.

(i) No.

Reasons:

- a. The proposal seems to have an assumption that the controlling shareholders have vested interests from the resolution of appointment of INED, however, it is not relevant.

b. It is unjustified to restrict controlling shareholders from exercising their voting power based on a regulatory presumption that there is a conflict of interests.

c. With the requirement of independent shareholders' approval, the HKEX seems to treat a continuing engagement of a Long Serving INED as a connected transaction. The HKEX should reveal their basis of such treatment. Long Serving INEDs can be valuable assets to the issuer. For instance, they can provide valuable guidance to new and incoming directors, valuable views from his/her experience in the company, and a more intact corporate memory for the issuer.

(ii) Yes.

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?

No

Please give reasons for your views.

In our opinion, Long Serving INEDs do not necessarily affect independence to the issuer so that an additional new INED is required. As long as the interests of the INED is disclosed, accompanied by shareholders' approval, independence is adequately established. Furthermore, according to question 4(a), if the continuing engagement of the Long Serving INED had successfully obtained shareholders' approval and the issuer is required to appoint a new INED (as suggested in this question 4(b)) nevertheless, then this would defeat the purpose of obtaining shareholders' approval in the first place and of incurring costs. In a sense, the HKEX is intruding the autonomy of the issuer in its discretion over board composition and number.

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.

An equity-based remuneration with performance related elements may better align the INED's interest with the interest of the issuer and shareholders.

The role of INED is not only to protect the issuer in the aspects of risk management, internal control systems, corporate governance but as well as to set strategies of the issuers and be responsible for development of the issuer's business (not unlike the other directors). Therefore, such remuneration would align the INED's interest with the issuer.

Furthermore, unexaggerated remuneration to INEDs would justify INEDs' "joint liability" with other directors, since they share joint and several liability to the issuer.

Such type of remuneration can encourage active participation of the INEDs to bring independence into the issuer's business, as it is independence that an INED brings to the issuer that is valuable.

Also, there are requirements in The Rules Governing the Listing of Securities in the HKEX ("Listing Rules"), such as Listing Rules 3.13(1) and 17.04(1), that limit the interest-holding by the INEDs.

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?

No

Please give reasons for your views.

We do not envisage the rationale of the HKEX to limit diversity to gender diversity.

The board should find an appropriate person to act as its board member, based on individual merits and attributes, such as the candidate's professional qualification, working experience, understanding of the industry, educational background, knowledge and skills, suitability to the business model and the culture of the company, as well as age and gender. The concept of diversity should be in a wider sense but not only gender.

We worry the issuer may turn down competent applicants due to gender, which may be subject to challenge.

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)?

No

Please give reasons for your views.

We don't agree diversity means gender diversity only. On this basis, we don't think the issuer would know the reason for or how to set such targets.

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.

We agree on the basis that diversity is in a general sense and not just gender diversity.

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.

The HKEX should (i) elaborate the reason for this addition and on how it plans to use such data, and (ii) clarify whether listed issuers need to submit these new forms.

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.

In a lot of instances, the founder is usually the chairman of the board and if an INED is to chair the NC, it may lead to possible conflict.

The chairman of the board sitting the chair of the NC would ensure succession and facilitate work between the NC and the board.

In case an INED is required to chair the NC, the HKEX would have to first consider requiring an INED to be the chairman of the board. This seems implausible to us.

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.

The HKEX should share how it evaluates effectiveness – such as is it necessary to have opposing views? Is absence of opposing views mean it is not effective?

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.

The HKEX should reveal how it uses the date to form its view. Participation may be cosmetic in nature and non-participation may not mean inactive contribution to the issuer's business. The attendance record may not be a meaningful metric to show real contribution.

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.

It may avoid unnecessary conflict or inconsistency with the engagement agreement and the Listing Rules.

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.

The HKEX should provide more clarity to issuers to lead them to place overall risk management disclosures in the CG report and for covering the ESG aspects in the CG report, a statement referring to the ESG report should be made in the CG report instead. This allows the ESG aspects to be wholly segregated under the ESG report.

The HKEX should give more guidance on preparing the "G" in the ESG report, despite the proposed revision in Appendix 14 on the linkage between CG and ESG under this consultation paper.

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.

However, the new requirement for disclosure in ESG report has been just adopted last year and such ESG report to be published in this second half of 2021. It may be too fast to adopt another new requirement for publication of ESG report in a shorter time as the issuer may have difficulties to have

enough resources to fulfil the stricter requirements for identification of ESG risk and reduction of publication time for ESG report. The HKEX should allow a transition period for issuers to adopt this alignment for the following reasons experienced in practice:

(1) when issuers decide to outsource the preparation and drafting of the ESG report, in particular when the issuer does not enough internal resources, the engagement often leaves little time for the service provider to complete a quality report; or

(2) the process often involves risk identification and target setting, followed by implementation, monitoring and review. All of which requires time for (i) analysis and decision-making from the board, (ii) implementation at different levels and (iii) feedback between these levels of the issuer.

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.

There is improvement but it is still not easy to navigate (seems there are a lot of cross referencing between the 3 parts), in particular, for newly listed issuers.

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?

Yes

Please give reasons for your views.

There seems to be a primary effort to establish rules or recommendations to govern INEDs but the HKEX does not show appreciation to the additional risks and burden shouldered by the INEDs, which have been assigned by the HKEX.

Furthermore, INEDs are often compensated well short of the risks and duties they are asked to take on. The issuer should have a policy to address fair compensation to the INEDs. High compensation would attract high-caliber INEDs.

The HKEX could mitigate the risks of INEDs by mandatorily requiring directors' insurance for INEDs.

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?

No

Please give reasons for your views.

For controversial proposals, such as gender diversity and ESG, the HKEX should allow more transition time for issuers to change.

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.

We disagree with the proposal. We see Long Serving INEDs as a very controversial issue in terms of how it affects, if any, independence to the issuer. This is even more so in the context of Hong Kong issuers.