



Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
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Hong Kong

18 June 2021

Dear Sirs

Re: Consultation Paper on Review of Corporate Governance Code and Related Listing Rules

PricewaterhouseCoopers welcomes the opportunity to respond to this consultation. We fully support your initiative to roll-out many of the proposed changes to the Code and commend you for taking a proactive approach to fostering good corporate governance practices. Many of the proposed changes will help enhance the transparency of issuers' corporate governance arrangements and allow investors and shareholders to obtain a better understanding of how important decisions are made which may affect their investments.

Given that the Code of Corporate Governance and the listing rules are updated on a regular basis (the last update occurring in July 2018), we generally consider that they should only be updated where absolutely necessary to ensure that the Code and the related listing rules remain fit for purpose and relevant to the issuing companies and their shareholders.

Whilst we generally agree with many of the proposed changes, there are several that we consider either unnecessary or require further consideration or updates before being implemented. Our full response is outlined below, and unless otherwise defined, terms used herein shall have the same meanings as those defined in the consultation paper.

1. Corporate Culture

Whilst we would advocate a stronger communication on culture from an issuer's Board to their shareholders, we only partially agree with the proposal to introduce a CP requiring an issuer's board to set culture in alignment with issuer's purpose, value, and strategy (**Question 1**).

Arguably, it is up to individual issuers to determine whether such an approach would be "fit for purpose" for their organisation. Culture is complex and multi-faceted, and an issuer's purpose, value and strategy are only a few of the factors that may be considered when setting the desired culture. As such, we recommend a CP be introduced requiring an issuer's board to set a minimum standard for culture and to report on this to shareholders on a periodic basis, without a need to directly link this to the organisation's purpose, value or strategy.

We agree that a CP should be introduced requiring the establishment of an anti-corruption policy. It is critical that sufficient governance structures and processes be implemented to protect issuers and their



shareholders from instances of corruption. This includes setting a clear “tone at the top” which is supported by actionable and enforceable policies relevant to management (**Question 2a**). We also agree that a standalone whistleblowing policy is critical to supporting an anti-corruption policy (as established under question 2a). This will ensure the protection of whistle-blowers and the timely reporting of instances of corruption to management (**Question 2b**).

2. Director’s independence

The proposal to introduce a CP requiring the 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 (**Question 3**), should be refined to focus on providing a definition of independence for issuers and their shareholders.

A policy requiring independence could be interpreted in multiple ways and it would be valuable to both issuers and their shareholders to clarify the following with respect to independence:

- Clarify or directly define what independence means for independent non-executive directors (INEDs) and non-executive directors (NEDs)
- If there are concerns with independence, how or when a Board should engage consultants or other third parties to obtain an independent view.

Providing a clearer definition for board member independence may assist in the implementation of a policy requiring independent views or input at the board level. In particular, it could better assist shareholders in determining whether an issuer’s Board is operating with sufficient independence.

We do not agree with the introduction of a new RBP requiring that an issuer generally should not grant [any] equity-based remuneration (e.g. share options or grants) with performance-related elements to INEDs (**Question 5**). INEDs are already required to act in the best interests of all shareholders, including minority shareholders. Providing some performance-based pay could help to ensure INEDs act in accordance with this requirement. Incentivising all Directors (INEDs or otherwise) in the same manner that shareholders receive their benefits could help with alignment. However, whilst we generally accept that if equity based remuneration is to be considered as part of an INED’s remuneration, it would be appropriate for only a relatively small amount of an INED’s remuneration to be linked to an equity-based mechanism. For the reasons noted above, it may therefore not be appropriate to adopt a complete prohibition on equity-based remuneration for INEDs.

Finally, we agree with the introduction of 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 (**Question 4b**).

3. Diversity

Whilst we believe the proposed changes under question 6 are well intentioned, we do not agree with these in their current proposed form. The current proposal takes a binary view to gender, and does not consider the modern definition of diversity or gender which is non-binary.

Gender is only one factor that should be considered when determining the minimum level of diversity required for a Board (**Question 6a**) and setting targets for Board diversity (**Question 6b**). A Board may be diverse in other diversity criteria (e.g. age, ethnicity, socio-economic background, etc.). However, under the proposed change, a single gender board (assuming a binary definition), which has met many other diversity criteria, would still not be considered to have achieved diversity.

On the other hand, a board comprising primarily a single gender but with one member who is of the opposite sex could be considered to have achieved diversity even though there were no other “best practice” criteria fulfilled. These proposed changes only consider one criterion for measuring diversity (gender), and this approach is too simplistic when considering both the modern definition of gender and diversity.

We also disagree with amending the relevant forms to include directors’ gender information (**Question 6d**). Due to the sensitive nature of how an individual may define their gender, including in alignment with a modern definition of gender which considers gender to be non-binary, some directors may not want to disclose their gender publicly. Generally, we would consider it reasonable if a director does not wish to disclose their gender.

Notwithstanding the responses above to question 6a, 6b and 6d, we do agree with the introduction of a CP requiring the board to review the implementation and effectiveness of its board diversity policy annually (**Question 6c**). To ensure the effective implementation of key Board level governance policies by both the Board and management, it is critical to ensure these are adequately disclosed to shareholders. They should also be periodically reviewed and assessed to determine their effectiveness in achieving the goals and objectives as set by the Board.

4. Nominations Committee (NC)

As there is an existing CP which already requires issuers to explain why their NC may not be chaired by the Chairman of the Board or an INED, or does not comprise a majority of INEDs, we would consider this to be sufficient in achieving independence in the operation and oversight of an issuer’s NC. We do not agree with the upgrade a CP to Rule requiring issuers to establish a Nominations Committee (NC) which is chaired by an INED and comprises a majority of INEDs (**Question 7**).

Whilst it may be appropriate to require most issuers to comply with this proposed requirement, there will also be instances where some issuers may find it difficult to comply due to the composition of the Board, and an exception to this rule may be also be appropriate. Specifically, where a family-controlled issuer delivers on the organisation’s goals and strong financial outcomes for shareholders, there may be no reason to enforce this rule.

5. Communications with Shareholders

We agree to upgrade an existing CP to an MDR that requires the disclosure of the issuer’s shareholders communication policy (**Question 8**). To ensure the effective implementation of key Board level governance policies by both the Board and management, it is critical to ensure these are adequately

disclosed to shareholders. They should also be periodically reviewed and assessed to determine their effectiveness in achieving the goals and objectives as set by the Board.

6. Other enhancements

We generally agree with the other enhancements to the Corporate Governance Code and the related Listing rules, with some clarification items that should be further considered as outlined below:

- The addition of a Rule requiring the disclosure of directors' attendance at general meetings in the poll results announcements (**Question 9**). However, whilst we generally agree with this rule, we would also note that director attendance at Board meetings is significantly more important when assessing the performance of Board members and their contribution to the organisation. If sufficient Board representation exists at general meetings for the Board to remain accountable to shareholders, some non-attendance by a limited number of Board members may be acceptable and therefore the proposal may be counter-productive for some organisations.
- The deletion of the CP that requires issuers to appoint NEDs for a specific term, so long as there are no changes to the CPs which set out the requirements for the rotation of Board Members in accordance with defined terms (**Question 10**).

7. ESG

We generally agree with proposals to elaborate on the linkage between the Corporate Governance Code and ESG. This includes:

- Elaborating on the linkage in the Code to ESG by setting this out in the introductory section of the Code will highlight the importance of good corporate governance over ESG matters to issuers (**Question 11**). We also agree with the inclusion of ESG risks in the context of risk management under the Code will ensure sufficient focus is placed on ESG related risks by issuers.
- The rules should be amended to require the publication of ESG reports at the same time as publication of annual reports. Whilst this was the initial intention of the Rule, publication of ESG reports out of cycle with the annual report was considered acceptable to give issuer's sufficient time to adjust to this change. Now that the ESG reporting has been in place for some time, we would consider this acceptable (**Question 12**).

8. Code Structure and Implementation Dates

Further to each of our responses above, we do not have any comments with regards to the re-arranged format of the Code (**Questions 13 and 14**).

Where we have agreed with each of proposals made within the consultation paper per our responses above, we agree also with the proposed implementation date to be set as the financial year commencing on or after 1 January 2022 (**Questions 15a**)



As we agree with the 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 INEDs on the board on a named basis in the shareholders' circular (*Questions 4b*), we also agree with the proposed implementation date to be set as the financial year commencing on or after 1 January 2023 (*Questions 16*).

If you would like further discussion or clarifications on the viewpoints set out in our response above, please do not hesitate to contact Eric Yeung on [REDACTED] (or email [REDACTED]).

Yours sincerely,

[REDACTED]