

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.

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Question 2a

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

Please give reasons for your views.

N/A

Question 2b

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

Please give reasons for your views.

N/A

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?

Please give reasons for your views.

N/A

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?

Please give reasons for your views.

N/A

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?

Please give reasons for your views.

N/A

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?

Please give reasons for your views.

N/A

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.

Hong Kong is well behind other leading markets in terms of ratio of women on boards. As of 31 December 2020, around 32.1% of 2,538 issuers have no female directors, while around 37.4% with only one female director. According to MSCI's "Women on boards: 2020 Progress Report", as at 30 October 2020, only 12.7% of director seats of listed issuers are held by women in Hong Kong, while Singapore has 19.5% and United Kingdom has 34.3%. It is very timely for Hong Kong Exchanges (HKEx) to further promote board (gender) diversity of listed issuers, which is long overdue.

The Equal Opportunities Commission (EOC) fully supports the proposal of HKEx to highlight that diversity is not considered to be achieved by a single gender board in the note of the Rule. Having said that, HKEx may consider setting a faster pace for issuers to achieve that goal and HKEx should consider doing more to avoid issuers taking a "one and done" approach to gender diversity in boardroom.

First, the HKEx's proposed timeline to eliminate single gender boards is too conservative. Paragraph 74 of the HKEx Consultation Paper proposes introducing a new Code of Practice requiring issuers to appoint a new Independent Non-Executive Director (INED) at the forthcoming AGM. By comparison, it is difficult to explain why the Consultation Paper proposes a three-year transition period for existing issuers with single gender boards to appoint at least a director of the absent gender on their boards. HKEx may consider giving a shorter transition period, if one is necessary.

Second, the EOC recommends HKEx to further consider introducing sustainable measures to prevent tokenism. Instead of a lone woman on board, a critical minority is required to avoid "groupthink", improve decision-making process and in turn, mitigate risk of company and increase financial performance.

A study on this critical mass theory in the Norwegian context was conducted in 2011 by analysing the effect of boards with one, two, or at least three women directors on organisational innovation. The study found that once the number of women directors increased 'from a few tokens (one woman, two women) to a consistent minority ('at least three women'), they are able to effectively influence the level of organisational innovation'* .

Lastly, gender diversity should not be limited to the Board, but should be extended to Board Committees as well. If gender diversity stops short of practising at Board Committees level, it is difficult to truly implement gender balance at all levels. In particular, considering the role of the Nomination Committee to promote gender diversity on board when making recommendations on the appointment

or reappointment of directors and succession planning for directors (including the chairperson and the chief executive), it is important that a fair representation of both genders are present in the Nomination Committee. In Singapore, paragraph 2.4 of their Code of Corporate Governance (August 2018), which is applicable to listed companies there requires “The Board and board committees are of an appropriate size and comprise directors who as a group provide the appropriate balance and mix of skills, knowledge, experience, and other aspects of diversity such as gender and age.”

*Mariateresa Torchia, Andrew Calabro and Morten Huse ‘Women Directors on Corporate Boards: From Tokenism to Critical Mass’ (2011) 102 Journal of Business Ethics 299, 308.

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.

The Equal Opportunities Commission (EOC) fully supports the above proposal. By adding “Diversity” (paragraph J) under Mandatory Disclosure Requirement (“MDR”), HKEx sends an important message that diversity would be a crucial requirement for issuers to establish clear board accountability and commitment to intensify their actions for gender diversity at both board level and across the senior management.

The EOC believes that disclosing the number of employees (including first layer of senior management below board level and their direct reports) in annual reports under MDR would give a better bird’s eye view of the overall gender diversity achieved by an issuer, other than just purely focusing on the number of board of directors. This would also pave way for better succession planning for listed issuers in future.

Given that at least a critical minority has to be formed before issuers can be benefitted from a more gender diversified board, the EOC recommends HKEx to consider setting recommended benchmark to achieve this critical minority on board. And the issuers may set staggered targets and timelines for achieving gender diversity at board level and across workforce.

In the United Kingdom (UK), the FTSE companies adopt voluntary targets to achieve a gender balanced leadership. Having said that, the Lord Davies report (2011) recommended that the FTSE 100 increase female board representation to 25% by 2015 and that the Financial Reporting Council require disclosure of boardroom diversity policies.

From 2015 onwards, the current cumulative (voluntary) recommendations for board composition on gender is minimum of 33% women's representation across leadership teams (the Executive Committee and direct reports) by 2020 in FTSE 100 and FTSE 250 companies. For FTSE 350 companies, they are recommended to increase women's representation to 33% by 2020. The Nominations Committee would review action plans and assess progress made to improve women's representation in leadership roles at least annually. All CEOs would take action to improve the under-representation in leadership roles and publish details of the number of the women in leaderships annually.*

The final report from the Hampton-Alexander Review of the UK, released recently said the number of female board directors in the FTSE 350 has doubled over the last five years. The report also noted that both the FTSE 100 and the FTSE 250 achieved the target of having at least 33 percent female representation on boards by the end of 2020.

In April 2014, the European Parliament approved a proposal aimed at increasing women's presence on corporate boards of listed companies to 40% by 2020. This target applied only to companies listed on stock exchanges in EU Member States, with the exception of small and medium-sized companies.**

HKEx should take stock of the gender diversity targets set and aimed by issuers across UK and EU markets.

More importantly, while some people are of the view that the issue for gender diversity on board is a scarcity of qualified women, the real challenge is actually the recruitment and retention of talented women.

On top of numerical targets and timelines for achieving gender diversity, the EOC recommends that HKEx should consider requiring issuers to formulate an Equal Opportunities (EO) Policy, with a view to improving gender diversity in the pipeline. The EO Policy should include measures to facilitate achieving gender diversity in the recruitment, training, staff retention and promotion processes. For instance, gender-blind shortlisting, family-friendly working environment and increasing retention rate of staff after maternity leave which are particularly important for retention of future woman leaders at management and board levels.

*Taking stock: UK diversity report – metrics and proposed changes. Retrieved on 1 June 2021.
<https://www.simmons-simmons.com/en/publications/ck0a8y0hln4o80b33h8nu1063/060718-uk-diversity-reporting-metrics-proposed-changes>

**Breaking the Glass Ceiling: Women in the Boardroom, A Study of Major Global Exchanges. Retrieved on 31 May 2021. See pp. 18-19
https://webstorage.paulhastings.com/Documents/PDFs/gender_parity_report_exchanges.pdf

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.

The Equal Opportunities Commission (EOC) fully supports the proposal to introduce a CP requiring the board to review the implementation and effectiveness of its board diversity policy annually.

The EOC also advises the HKEx to set out more concrete steps as CP or recommended good practices under “B.1 Board composition, succession and evaluation” and “B.3 Nomination Committee” in Part 2 of Principles of Good Corporate Governance, Code Provisions and Recommended Best Practices (CG Code). For instance, some major directions for recruitment processes could be provided as follows:

- (i) Reach the widest possible talent pool during executive search and nomination stages, so that they potential candidates are not only the board’s circle of contacts;
- (ii) Issuers can provide their diversity targets to their executive search firms;
- (iii) Adopt consistent selection and assessment criteria at all recruitment stages in terms of measurable skills, experience, knowledge and personal qualities,
- (iv) Actions that the issuers have been taken to oversee the development of a diverse pipeline for future succession to board and senior management appointments, and
- (v) The Nomination Committee should meet to consider the Board’s progress in improving women’s representation in leadership roles at least annually, and not only when there are specific board appointments to consider.

The above guidance could better equip the issuers with the means and specific measures to achieve gender diversity. The UK Corporate Governance Code 2018 (July 2018)*, that applies to financial years beginning on or after 1 January 2019, requires a greater emphasis on succession planning and the need for a company to develop a diverse executive pipeline and the nomination committee's remit has been expanded to oversee the development of this pipeline. The EOC strongly encourages the HKEx to take reference and adopt similar governance practices from the London Stock Exchange.

*The UK Corporate Governance Code 2018 refers to the one published by the Financial Reporting Council

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 EOC fully agrees to adopt any relevant, or consequential amendments in order to reflect transparent disclosure of gender information for board diversity purposes. The HKEx could also consider to include racial profile of directors for the improvement of racial diversity, if appropriate, in the near future.

The EOC also recommends HKEx to establish a database of directors' gender information of all issuers and publish a league table for the public to compare the progress of achieving gender diversity on board, in management and senior management, and in the workforce among issuers of the same sector/industry.

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?

Yes

Please give reasons for your views.

The EOC particularly welcomes the HKEX "will set out in the guidance the expected disclosures regarding the INED nomination and appointment, including the channels used in searching for appropriate INED candidates (whether through search firms, advertisements or personal network), and the potential

contribution the candidates would bring to the board (in terms of their qualifications, skills and experience).”

This will raise the overall practice and standards in executive search for board diversity as current market practice still relies heavily on personal network or word-of-mouth recruitment. Improving the channels for recruitment is the first and fundamental step to putting the objective of board diversity into actions.

Furthermore, as mentioned in our response to Question 6(a), the EOC recommends that gender diversity should be practiced at Board Committees level. Hence, the Nomination Committee itself should have a gender diversified composition as well.

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?

Please give reasons for your views.

N/A

Question 9

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

Please give reasons for your views.

N/A

Question 10

Do you agree with our proposal to delete the CP that requires issuers to appoint non-executive

directors for a specific term?

Please give reasons for your views.

N/A

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?

Please give reasons for your views.

N/A

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?

Please give reasons for your views.

N/A

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?

Please give reasons for your views.

N/A

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.

N/A

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?

Please give reasons for your views.

N/A

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?

Please give reasons for your views.

N/A