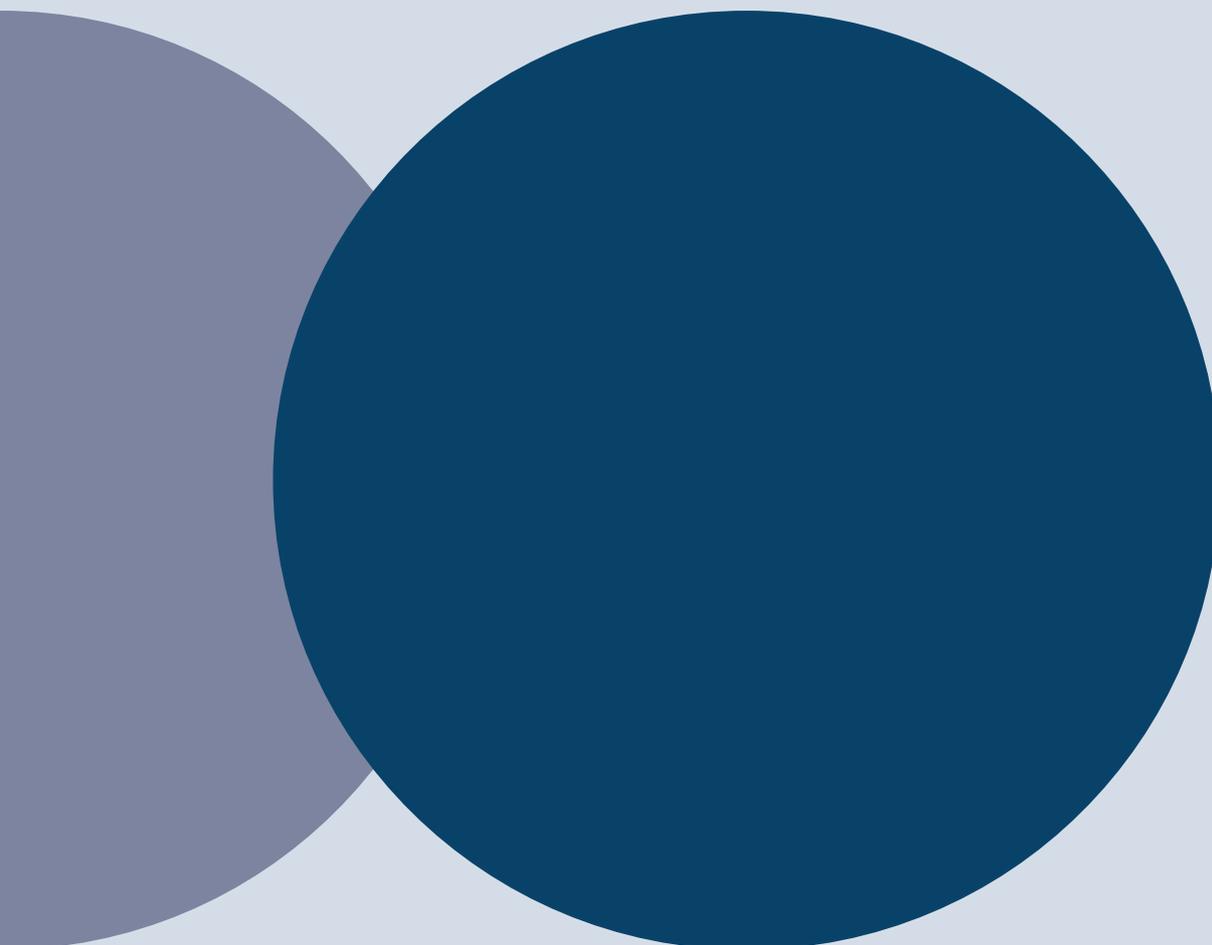


July 2018

## CONSULTATION CONCLUSIONS

### REVIEW OF THE CORPORATE GOVERNANCE CODE AND RELATED LISTING RULES



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## EXECUTIVE SUMMARY

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### Introduction

1. In November 2017, The Stock Exchange of Hong Kong Limited (the “**Exchange**”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (“**HKEX**”) published a “*Consultation Paper on Review of the Corporate Governance Code and Related Listing Rules*” (the “**Consultation Paper**”). The Consultation Paper sought comments on proposed changes to the Corporate Governance Code and Corporate Governance Report (the “**Code**”), as well as related amendments to the Rules Governing the Listing of Securities on the Exchange (the “**Listing Rules**” or “**Rules**”).
2. This paper presents the results of the consultation.
3. The consultation period ended on 8 December 2017. The Exchange received a total of 91 valid submissions<sup>1</sup> from a broad range of respondents including professional bodies and industry associations, market practitioners, listed companies, investment managers, non-profit organisations and individuals, amongst others.<sup>2</sup>

### Market Feedback

4. There is clear support for the proposed amendments to the Listing Rules and the Code for the enhancement of corporate governance framework in Hong Kong, with all the proposals achieving majority support.
5. We conclude that all the proposals outlined in the Consultation Paper should be adopted, with certain modifications or clarifications set out in this paper.
6. Many supporters also made valuable comments on further measures to enhance our corporate governance framework. As these comments were outside the scope of this consultation, they will be considered in future reviews as appropriate.

### Major changes adopted

7. This review aims to ensure that our Listing Rules and the Code remain relevant and continue to promote the highest standards of governance amongst our issuers. In summary, the review includes the following measures:
  - (a) strengthen the transparency and accountability of the board and/or nomination committee on election of directors including independent non-executive director (“**INED**”);
  - (b) improve transparency of INEDs’ relationship with issuers;
  - (c) enhance the independence criteria in assessing potential INED candidates;
  - (d) promote board diversity including gender; and

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<sup>1</sup> There were five invalid submissions (e.g. blank questionnaires with only company/personal information filled) and seven duplicated responses. Where two or more submissions are entirely identical except the company/personal information, we have counted the number of responses as one. Submissions by a professional body or an industry association were counted as one response irrespective of the number of individual members that the body/association represents.

<sup>2</sup> See Paragraph 27 for the number of submissions received from each category.

- (e) require greater transparency of dividend policy.
8. In addition, we have published a “*Guidance for Boards and Directors*” (“**Guidance**”) to help directors carry out their role more effectively. The Guidance contains practical advice to board and directors which should help them perform their role and responsibilities (including a recommendation to a listing applicant to appoint INEDs at least two months prior to listing).<sup>3</sup> However, the Guidance does not form a part of the Listing Rules, nor do they amend or vary any Rule requirements, or absolve issuers and/or their directors of any obligations to make their own judgment.

### **Independent Non-executive Directors**

9. A number of the Rule and Code changes discussed in this consultation will result in greater demand being imposed on the board and/or the nomination committee. The nomination committee plays an important role in ensuring the board comprises directors with an appropriate balance of skills, experience and diversity of perspectives and its work will be subject to even more scrutiny in the future because of the focus on INEDs’ independence and board diversity, amongst other corporate governance issues.<sup>4</sup>

#### Overboarding and INED’s time commitment

10. To provide greater accountability of the nomination process, we amend a Code Provision (“**CP**”, subject to “comply or explain”) to require the board to state in the circular to shareholders accompanying the resolution to elect the INED its reasons for determining that the proposed INED would be able to devote sufficient time to the board if the person will be holding their seventh (or more) listed company directorship.

#### Board diversity

11. We continue to focus on diversity in the broadest sense, which includes gender diversity. We will upgrade a CP to a Rule, requiring issuers to have a diversity policy and to disclose the policy or a summary of the policy in the issuers’ corporate governance reports. This would make our Rules in this respect stricter than the listing rules in most other jurisdictions such as Australia and the UK. Australia only requires reporting of diversity policy as a “comply or explain” provision<sup>5</sup> and the UK only requires certain large listed companies to include in their corporate governance statements a description of their diversity policies.<sup>6</sup>
12. We also amend a CP that the board should state in the circular to shareholders accompanying the resolution to appoint an INED its diversity consideration, including:
- (a) the process used for identifying the nominee;
  - (b) the perspectives, skills and experience that the person can bring to the board; and

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<sup>3</sup> Paragraph 9 of the Consultation Paper.

<sup>4</sup> According to the “Analysis of Corporate Governance Practice Disclosure in Annual Reports of 2016”, 5% of the issuers have not established a nomination committee. See [http://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Exchanges-Review-of-Issuers-Annual-Disclosure/Review-of-Implementation-of-Code-on-Corporate-Governance-Practices/CG\\_Practices\\_201612\\_e.pdf?la=en](http://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Exchanges-Review-of-Issuers-Annual-Disclosure/Review-of-Implementation-of-Code-on-Corporate-Governance-Practices/CG_Practices_201612_e.pdf?la=en).

<sup>5</sup> Recommendation 1.5 of ASX Corporate Governance Council “*Corporate Governance Principles and Recommendations*”, 27 March 2014, accessible at: <https://www.asx.com.au/regulation/corporate-governance-council/review-and-submissions.htm>.

<sup>6</sup> DTR 7.2.8R of the Disclosure Guidance and Transparency Rules published by the UK Financial Conduct Authority (“**FCA**”) which requires certain large listed companies to include in their corporate governance statements a description of the diversity policy applied to their board of directors, covering aspects such as age, gender or educational and professional backgrounds.

- (c) how the nominee would contribute to diversity of the board.

#### Factors affecting INED's independence

13. To strengthen the criteria for the assessment of potential INEDs independence and to align with international practice, we adopt the following changes:
- (a) amend the Rule on independence criteria for INEDs to extend the cooling off period for persons with material interests in the issuer's principal business activities, from the current no cooling off period to a one-year period.
  - (b) amend the Rule to extend the cooling off period for former professional advisers from the current one-year cooling off period to a two-year period.
  - (c) make a related amendment to a CP to extend the cooling off period from the current one-year period to a two-year period for former partners of the issuer's audit firm before they can be members of the issuer's audit committee.
  - (d) introduce a Note under the Rule recommending the inclusion of person's immediate family member<sup>7</sup> in the assessment of a proposed INED's independence.
  - (e) introduce a Recommended Best Practice to the Code ("RBPs", i.e. subject to voluntary disclosure) of an INED's cross-directorships or significant links with other directors in the Corporate Governance Report.

#### Nomination policy

14. Amend the Mandatory Disclosure Requirement ("MDR") to include disclosure of nomination policy.

#### Directors' attendance at meetings

15. Directors' attendance at general meetings: amend a CP to replace the last sentence to read "*Generally they should also attend general meetings to gain and develop a balanced understanding of the views of shareholders.*"
16. Chairman's annual meetings with INEDs: amend a CP to require that, INEDs excluding non-executive directors ("NEDs") and executive directors ("EDs") should meet with the Chairman at least annually.

#### Dividend policy

17. Introduce a CP to require issuers to disclose their dividend policies in annual reports.

#### Electronic dissemination of corporate communications – implied consent

18. Whilst there is general support for shareholders' consent to be implied for electronic dissemination of corporate communications by issuers, we would not propose to adopt such implied consent regime until Hong Kong's company law is amended to permit implied consent for corporate communications.

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<sup>7</sup> Immediate family member is defined in Rule 14A.12(1)(a): his spouse, his (or his spouse's) child or step-child, natural or adopted, under the age of 18 years.

## **Gender neutral Rules**

19. We have taken the opportunity to make the revised Rules gender neutral.

## **Implementation date**

20. The Rules and Code amendments in **Appendices III** and **IV** of this paper will be effective on 1 January 2019.

## **About this paper**

21. All submissions are available on the HKEX website<sup>8</sup> and a list of respondents (other than those who requested anonymity) is set out in **Appendix I**. We have also set out a summary result of our quantitative analysis of the responses in **Appendix II**.
22. This paper summarises the key comments made by respondents on the proposals, and our responses and conclusions. This paper should be read in conjunction with the Consultation Paper, which is posted on the HKEX website.<sup>9</sup>
23. The amended Main Board Listing Rules and Code (including consequential changes) are set out in Appendix III, while corresponding amendments made to the GEM Listing Rules and Code (including consequential changes) are set out in Appendix IV. They have been approved by the Board of the Exchange and the Securities and Futures Commission, and will take effect from 1 January 2019. While Rule and Code references in this paper are to the Main Board Listing Rules, they apply equally to the GEM Listing Rules and Code Provisions.
24. We would like to thank all respondents for their time and effort in reviewing the Consultation Paper and sharing with us their detailed and thoughtful suggestions.

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<sup>8</sup> [http://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses\\_Nov\\_2017?sc\\_lang=en](http://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses_Nov_2017?sc_lang=en).

<sup>9</sup> <http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/November-2017-Review-of-the-CG-code-and-Related-LRs/Consultation-Paper/cp2017111.pdf>.

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## MARKET FEEDBACK AND CONCLUSIONS

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25. This paper sets out our proposals to amend the Listing Rules and the Code, a summary of the comments received, and our responses and conclusions.
26. The amended Main Board and GEM Listing Rules and Code (including consequential changes) are set out in Appendix III and Appendix IV, respectively.
27. The 91 respondents can be grouped into broad categories as follows:

<b>Category</b>	<b>Number of respondents</b>
Listed companies	15
Market practitioners	17
Professional bodies and industry associations	15
Investment managers	10
Non-profit organisations	5
Individuals	20
Other Entities <sup>10</sup>	9
<b>Total</b>	<b>91</b>

28. A list of the respondents forms Appendix I. Except for 26 respondent(s) who requested the Exchange not to publish their submissions, the full text of all the submissions is available on the HKEX website.<sup>11</sup>

### Methodology and Approach

29. For the purpose of our quantitative analysis, we counted the number of responses received not the number of respondents those submissions represented. For example, a submission by a professional body was counted as one response even though that body may represent many members.
30. We have made a qualitative assessment of the responses in addition to a quantitative assessment.
31. Some respondents agreed with the general policy direction of a particular proposal but indicated that it did not go far enough. For example, some argued that the threshold for requiring the issuer to explain why an INED holding a seventh directorship would be able to devote sufficient time should be placed at the fifth directorship instead. In these cases, we have interpreted the respondents as supportive of the proposal as it is apparent that they are generally supportive of the policy direction but preferred a more stringent measure. Their comments and the rationale for their views would be accordingly reflected in this paper.
32. The expression on the level of support for each proposal, e.g. “a majority” generally refers to a majority of respondents who responded to the proposal only. It does not include those respondents who did not indicate a view.
33. A number of respondents submitted drafting suggestions, which we have reviewed and incorporated where we thought appropriate.

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<sup>10</sup> Others include Academia, HKEX Participants, Legislator, Political Parties and Think Tanks.

<sup>11</sup> [http://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses\\_July\\_2018?sc\\_lang=en](http://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses_July_2018?sc_lang=en).

## PART I: INDEPENDENT NON-EXECUTIVE DIRECTORS

### 1. Overboarding and INED's time commitment

(Question 1)

#### The proposal

34. We proposed amending CP A.5.5 of the Code so that in addition to the CP's current requirements, the board should also explain, if the proposed INED will be holding their seventh (or more) listed company directorship why they would still be able to devote sufficient time to the board.

#### Comments received

35. A large majority supported the proposal.<sup>12</sup>
36. A majority of the supporting respondents considered setting the threshold for explanation at the seventh directorship is appropriate. Many of them commented that the proposed amendments would mitigate the issue of overboarding and enhance transparency for shareholders. Many also commented that the proposal would help us align with international practice.
37. A number of supporters noted that being directors of listed companies require certain time commitments and they are expected to exercise a high degree of duty of care. In other words, the more board seats held, the less time available for directors to discharge their duties effectively and to provide adequate oversight.
38. A couple of supporters also pointed out that most issuers have a December financial reporting year end, a person with six or more directorships may encounter clashes of meetings which may prevent them from properly preparing for, and attending the meetings. This will impact on their ability to perform and meet their duties and obligations.
39. Whilst supporting the rationale in the Consultation Paper, and agreeing with the general direction of the proposal, about 20% of the supporters thought that the threshold for explanation by the issuer should be set at the sixth or fifth or even lower number of directorships that an individual is being considered, rather than the seventh as proposed. A couple of them noted that the listing rules of Shenzhen Stock Exchange<sup>13</sup> and the Shanghai Stock Exchange<sup>14</sup> cap the number of INED positions a person may hold to five.
40. A number of supporters and opponents commented that there should be a qualitative assessment of the director's role(s) as the demands of each directorship differ. Some of their comments are summarised below:
- (a) directorships of complex listed companies or situations may require more time commitments;

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<sup>12</sup> 68 responded to this proposal of which 57 (i.e. 84%) supported. Supporters formed a majority from each of the following categories: listed companies, market practitioners, professional bodies/industry associations, investment managers, individuals and others (see Paragraph 27 for details of the categories).

<sup>13</sup> See "The Measures for Archival Filing of Independent Directors" published by the Shenzhen Stock Exchange on 12 May 2017, accessible at: <http://www.szse.cn/lawrules/rule/company/P020180328465714684910.pdf> (Chinese version only)

<sup>14</sup> See "The Measures for Archival Filing of Independent Directors and Training Guidelines" published by the Shanghai Stock Exchange on 30 September 2016, accessible at: [http://www.sse.com.cn/lawandrules/sserules/listing/stock/c/c\\_20160930\\_4184651.shtml](http://www.sse.com.cn/lawandrules/sserules/listing/stock/c/c_20160930_4184651.shtml) (Chinese version only).

- (b) each board committee chairmanship should be counted as two directorships given the inevitable extra time commitments;
  - (c) full-time directors should be differentiated from part-time ones;
  - (d) a CEO should not serve on more than two other boards; and
  - (e) the proposal might have focused too much on listed companies' directorships whilst a director may have other time commitments to non-listed organisations.
41. Opponents' main rationale included that an INED's time commitment to each board is depending on the individuals' own circumstances and the complexity of the companies they serve. To impose the threshold as proposed would be unfair to those competent INEDs who have sound knowledge and skills to effectively handle the seventh or more positions.
  42. Several respondents suggested that instead of requiring the issuer to explain whether an INED would have sufficient time to devote to the board, the circular should include a personal confirmation from the nominated INED.
  43. Three opponents commented that the nomination committee should have already considered all circumstances before nominating an INED.
  44. A few respondents suggested that the same individual being an INED across companies within one listed issuer's group should constitute one directorship only.

#### **Our response and conclusion**

45. We concur with the majority of the supporting respondents and their rationale that setting the threshold at the seventh directorship is appropriate at this stage (Paragraphs 36 to 38). The proposed threshold is also in line with the Institutional Shareholder Services' ("ISS") 2018 Benchmark Policy Recommendations for Hong Kong.<sup>15</sup>
46. We do not agree that the threshold should be set at the sixth or fifth or lower directorship because that would impose a significant burden on issuers (Paragraph 39). The new CP applies to the INED's election to a new board as well as any re-elections to the other boards.<sup>16</sup>
47. We note suggestions for qualitative assessment and we fully recognise that an INED's time commitment to each board is dependent on many factors (Paragraphs 40 and 41). We set out some factors that the board may consider when nominating an INED in the Guidance.
48. We appreciate that one should not only look at a director's time commitments in relation to listed companies, their other significant time commitments should also be taken into account (Paragraph 40(e)). We refer to CP A.6.6. which requires each director to disclose to the issuer at the time of appointment, and in a timely manner for any change, the number and nature of offices held in public companies or organisations and other significant commitments. This disclosure would help the board's assessment of the proposed INED's likely time commitments.

<sup>15</sup> Accessible at: <https://www.issgovernance.com/file/policy/active/asiapacific/Hong-Kong-Voting-Guidelines.pdf>.

<sup>16</sup> See also ISS's recommendation, web link in footnote 15.

49. As for the suggestion that there should be personal confirmation from the nominated INED (Paragraph 42), the issuer or its nomination committee may request such confirmation if it considers helpful. However, ultimately the issuer or its nomination committee is responsible for conducting the due diligence prior to the nomination and they should be held accountable to shareholders by giving their reasons for nominating the individual concerned.
50. We agree that it is the role and function of the nomination committee to consider all circumstances before nominating an INED (Paragraph 43). However, having done so, the issuer should explain to shareholders the reasons for determining that the proposed nominee would be able to devote sufficient time to the board.
51. We disagree that the same individual being an INED across listed companies within one listed issuer's group should only constitute one directorship (Paragraph 44). Whilst we appreciate that INEDs on multiple boards within a listed issuer's group may require less time to understand each of the listed company's strategies, objectives and business operations, the governance and other issues of the listed companies within a group do not necessarily overlap and each would likely require the INED's attention.
52. In view of the strong support for our proposal, we will amend the Code as proposed.

## **2. Board diversity**

(Questions 2 to 4)

### Diversity policy

#### **The proposals**

53. We proposed upgrading CP A.5.6 to a Rule (Rule 13.92) requiring issuers to have a diversity policy and to disclose the policy or a summary of it in their corporate governance reports.
54. We also proposed making consequential amendments to MDR L.(d)(ii) to reflect the upgrade described in Paragraph 53.

#### **Comments received**

55. There was an overwhelming support for both proposals.<sup>17</sup>
56. In addition to agreeing with the rationale set out in the Consultation Paper, i.e. board diversity promotes effective decision-making, enhance corporate governance and investor confidence,<sup>18</sup> supporters of the proposals also gave reasons including:
- (a) numerous studies have indicated that board diversity is associated with better corporate and financial performance;
  - (b) keeping in touch with the concerns and expectations of a company's stakeholders is much easier when the board's composition reflects that of its major stakeholders; and

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<sup>17</sup> For upgrading CP A.5.6 to a Rule, 88 responded to this proposal of which 85 (i.e. 97%) supported. For amendment to MDR L.(d)(ii), 87 responded to this proposal of which 85 (i.e.98%) supported. A majority from all the categories supported these proposals.

<sup>18</sup> Paragraphs 47 and 48 of the Consultation Paper.

- (c) enhancing corporate reputation.
57. Whilst noting that the upgrade was in the right direction, about a quarter of the supporters believed that the Rule (Rule 13.92) should require specific reference to gender in the board diversity policies. Their rationale included that:
- (a) gender could not be regarded as being one aspect of diversity within a list of many factors, all to be given equal weighting because women are half of the global population;
  - (b) Hong Kong's business sector risks falling further behind global counterparts and potentially other markets in Asia which are starting to recognise the economic and social impact of gender diverse boards; and
  - (c) gender diversity would ensure that the board tapped into a greater well of talent, particularly given that 48% of Hong Kong's labour forces are women and 56% of university graduates are women.
58. These respondents also suggested that the Exchange should:<sup>19</sup>
- (a) provide guidance on diversity policy content (including disclosing measurable objectives to achieve gender diversity);
  - (b) recommend disclosure of a skills matrix in the circular to shareholders with numerical and graphical information illustrating the composition of the board by reference to the factors in the diversity policy, length of service, and the impact after the nominated individual is elected; and
  - (c) require the diversity policy to set measurable objectives to achieve gender diversity.
59. A number of these respondents also criticised the current reporting in this area. One investment manager described the current reporting on diversity policies as "*perfunctory in nature*".
60. Several respondents suggested including social and ethnic background, LGBT<sup>20</sup> and people with disabilities as additional factors in assessing diversity.
61. Although the proposal did not highlight gender, a number of the supporters of the proposal opined that in their view diversity encompasses more than simply gender, one opponent to the proposals opined that the proposals would bring over emphasis on gender and other issues which probably would not add more value to the current practice and may lead to positive discrimination.
62. A small number of respondents opposed the proposals. They argued that the Exchange should provide flexibility for listed issuers to decide on their own policies rather than requiring issuers to have diversity policies.

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<sup>19</sup> The same respondents have also made other suggestions such as limiting the tenure of independent directors to nine years, etc. which are outside the scope of this consultation.

<sup>20</sup> Acronym for "lesbian, gay, bi-sexual and trans-sexual".

## Our response and conclusion

63. Whilst there were some views that the Listing Rules should specifically highlight gender (Paragraph 57), there were also views that diversity encompassed more than simply gender and other factors were suggested (Paragraphs 60 and 61).
64. Given that the consultation did not seek views on whether gender (or any other characteristics) should be specifically highlighted in the Rules, the views given in Paragraph 61 may not necessarily represent the overall views of the market. For the same reason, we also do not consider it appropriate to specify other characteristics such as LGBT and disabilities.
65. We note that Australia requires reporting of diversity policy as a “comply or explain” provision<sup>21</sup> and the UK requires certain large listed companies to include in their corporate governance statements a description of their diversity policies.<sup>22</sup> Also, “*the 2018 UK Corporate Governance Code*”<sup>23</sup> will require, on a “comply or explain” basis, amongst others, an issuer<sup>24</sup> to disclose in the annual report gender balance of those in the senior management and their direct reports.<sup>25</sup> Nevertheless, it should be noted that the UK continues to emphasise the importance of diversity in its broadest sense.<sup>26</sup>
66. We recognise the importance of board diversity to corporate governance and agree that insofar as the reporting of diversity policies are concerned (Paragraph 58), for some issuers there is definitely room for improvement. Furthermore, Hong Kong appears to be lagging behind other leading markets in terms of the ratio of women on boards and fall below the average growth according to some research statistics.<sup>27</sup> In light of the strong call for gender diversity, we believe it would be helpful to provide guidance in this area. We included diversity policy with specific recommendations on gender diversity in the Guidance. As a related topic, the Guidance also recommends and explains the benefits of drawing up a skills matrix of the board (Paragraph 58(b)).
67. As for the suggestion that the diversity policy should set measurable objectives to achieve gender diversity, we agree insofar as the broader definition of diversity is adopted. In this connection, we consider the current Code adequate as it already requires mandatory disclosure of “*any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives*”.<sup>28</sup>
68. In view of the support for our proposal, we will upgrade a CP to a Rule requiring a diversity policy and to disclose the policy or a summary of the policy in the issuers’ corporate governance reports.

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<sup>21</sup> See footnote 5.

<sup>22</sup> See footnote 6.

<sup>23</sup> Provision 23 of the 2018 UK Corporate Governance Code published by the UK Financial Reporting Council’s (“FRC”) on 16 July 2018, accessible at: <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>.

<sup>24</sup> All companies with a premium listing.

<sup>25</sup> The revised 2018 UK Corporate Governance Code will be effective from accounting periods beginning on or after 1 January 2019.

<sup>26</sup> Paragraph 65 of the “Proposed Revisions to the UK Corporate Governance Code” published by the FRC in December 2017.

<sup>27</sup> See Egon Zehnder’s 2016 Global Board Diversity Analysis, accessible at: [http://www.qbda.online/assets/EZ\\_2016GBDA\\_DIGITAL.pdf](http://www.qbda.online/assets/EZ_2016GBDA_DIGITAL.pdf)

<sup>28</sup> MDR Section L.(d)(ii).

## Election of INED

### **The proposals**

69. We proposed amending CP A.5.5, requiring that the board to state in the circular to shareholders accompanying the resolution to elect the director:
- (i) the process used for identifying the nominee;
  - (ii) the perspectives, skills and experience that the person is expected to bring to the board; and
  - (iii) how the nominee would contribute to diversity of the board.
70. We also proposed making consequential amendments to MDR L.(d)(ii) to reflect the upgrade described in Paragraph 69.

### **Comments received**

71. There was significant support for the proposals.<sup>29</sup>
72. Supporters mostly agreed with the rationale in the Consultation Paper, i.e. the proposals would enhance transparency on the considerations given by the nomination committee and allow shareholders to make informed voting decisions.
73. There were a small number of opponents to the proposals. They argued that the proposals would add administrative burden on issuers and would potentially trigger questions from shareholders during general meetings.
74. Several respondents suggested making the language of the Rules gender neutral.

### **Our response and conclusion**

75. We do not agree that the proposals would add undue administrative burden on issuers (Paragraph 73). The issuers should already have a process for identifying and recommending INED candidates. Furthermore, as it is a “principle” of the Code the issuer should have considered the perspectives, skills and experience that the person would bring to the board and how the person might contribute to board diversity. The CP only requires that the issuer should explain these matters clearly.
76. As for the comment that the disclosure would potentially trigger questions from shareholders during general meetings (Paragraph 73), we consider this would be a positive effect of the disclosure because shareholders should be encouraged to ask questions at general meetings and to hold the issuer’s board accountable for its action.
77. In view of the clear support for our proposals, we will make amendments as proposed with minor changes to adopt a gender neutral language.

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<sup>29</sup> For the amendments to CP A.5.5, 85 responded to this proposal of which 75 (i.e. 88%) supported. For the consequential amendments to MDR L.(d)(ii), 87 responded to this proposal of which 85 (i.e. 98%) supported. A majority from all the categories supported the proposals.

### 3. Factors affecting INED's independence

(Questions 5 to 10)

#### Cooling off period for former professional advisers

#### The proposals

78. We proposed revising Rule 3.13(3) so that there is a three-year cooling off period for professional advisers before they can be considered independent, instead of the current one year.
79. We also proposed revising CP C.3.2 so that there is a three-year cooling off period for a former partner of the issuer's existing audit firm before the person can be a member of the issuer's audit committee.

#### Comments received

80. A slight majority supported the proposals.<sup>30</sup>

##### *Professional advisers*

81. Supporters agreed with the rationale set out in the Consultation Paper and considered a three-year cooling off period reasonable. Most supporters agreed that extending the cooling off period for former professional advisers to three years would better align with practices in other jurisdictions such as the US, UK and Australia and provide sufficient assurance on independence of proposed INEDs.
82. Several respondents<sup>31</sup> supported increasing the cooling off period to five years as they considered that would provide sufficient comfort for INEDs to be independent.
83. A few opponents to the proposal<sup>32</sup> suggested that the additional two-year cooling off period for professional advisers as a Rule should be a CP instead to allow issuers some flexibility.
84. Opponents to the proposal<sup>33</sup> primarily argued that the three-year cooling off period for professional advisers was too long or overly restrictive. They believed the proposal would shrink the pool of available director candidates, which would increase the difficulties for listed issuers in accessing competent and qualified INEDs.
85. A number of respondents<sup>34</sup> suggested a two-year cooling off period instead.
86. Some opponents to the proposal<sup>35</sup> also cited the rules in Mainland China and Singapore where the cooling off period is only one year.<sup>36</sup> Australia and UK have three-year cooling off periods for former professional adviser on a "comply or explain"

<sup>30</sup> For the proposed amendment to Rule 3.13(3), 55 responded to this proposal of which 32 (i.e. 58%) supported. For the proposed amendment to CP C.3.2, 54 responded to this proposal of which 37 (i.e. 69%) supported. The proposals gained support from nearly all investment managers but did not achieve majority support from each of the following categories: listed companies, market practitioners, professional bodies/industry associations.

<sup>31</sup> These are mainly investment managers.

<sup>32</sup> Including the Hong Kong Institute of Directors.

<sup>33</sup> Including the Law Society of Hong Kong and the Hong Kong Independent Non-Executive Director Association.

<sup>34</sup> Including the Chamber of Hong Kong Listed Companies.

<sup>35</sup> Including the Hong Kong Institute of Certified Public Accountants.

<sup>36</sup> "Measures of the Shenzhen Stock Exchange for the Record-filing of Independent Directors" 深圳證券交易所獨立董事備案辦法 Article 7(5) and (7) and Monetary Authority of Singapore, Guideline 2.3 of "Code of Corporate Governance", issued in May 2012, accessible at <http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Corporate-Governance/Corporate-Governance-of-Listed-Companies/Code-of-Corporate-Governance.aspx>.

basis. They therefore suggested a two-year cooling off period instead. Moreover, the Hong Kong Monetary Authority also only recommends one-year cooling off period.<sup>37</sup>

87. One respondent commented that a strict reading of the rule as drafted would only capture current, but not former directors, partners, principals or employees of a professional adviser entity.

*Former audit partners*

88. Regarding the cooling off period for former partners of the issuer's existing audit firm before the person can be a member of the issuer's audit committee, most respondents believed it should be of the same length as that to be imposed on professional advisers. Arguments from both supporters and opponents were similar to those advanced in respect of the cooling off period for professional advisers.

## **Our response and conclusions**

*Professional advisers*

89. Although the proposal achieved a slight majority support, there were wide-ranging views from between one to five years being the appropriate length of cooling off period (Paragraphs 81 and 82). We appreciate the arguments by some of the issuers and professional bodies in relation to the restricted pool of competent professional INEDs (Paragraph 84). However, we are also aware of views that this may not be the case as the pool of professional candidates is only reduced by a very small number of individual(s) who might have had professional affiliations with the company. We believe companies need to search a broader range of experienced professionals and convince them of the merits of joining their boards.
90. Having weighed up all the arguments and taken into account international best practice, we conclude that it is appropriate to amend the Rule to extend the cooling off period to a two-year period.
91. We agree with the drafting comments (Paragraph 87) and will modify our proposals relating to Rule 3.13 (3).

*Former audit partners*

92. The cooling off period for former audit partners acting as a member of its audit committee should be aligned with that of former professional advisers, i.e. two years. We conclude that we will amend the CP to extend the cooling off period to a two-year period.

Cooling off period in respect of material interests in business activities

## **The proposal**

93. We proposed revising Rule 3.13(4) to introduce a one-year cooling off period for a proposed INED who has had material interests in the issuer's principal business activities in the past year.

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<sup>37</sup> "Guidance on the Empowerment of INEDs in Banking Industry in Hong Kong" issued by HKMA on 14 December 2016. See <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2016/20161214e1.pdf>

## Comments received

94. A significant majority of the respondents supported the proposal.<sup>38</sup>
95. Most supporting respondents agreed that one year is an appropriate cooling off period. They tended to agree with the rationale set out in the Consultation Paper, i.e. a proposed INED may not be, or may not be perceived, to be independent if the individual had a material interest in the issuer's principal business activities in the past year. Not having a cooling off period for this situation is also at odds with international practice.
96. One respondent thought that the measure would strike a balance between aligning with international best practice and the practical issue of reducing the pool of available INEDs.
97. A number of respondents suggested a three-year cooling off period. They disagreed with imposing a different cooling off period from the one imposed on professional advisers and they also thought it necessary to align with international best practice.<sup>39</sup>
98. Two opponents argued that there should not be a cooling off period for an INED candidate who had material interests in the issuer's business activities. One thought that the INED candidate's own interest in the issuer would cease as soon as the person left the company that had a material interest in the issuer. Another expressed the view that the main consideration was whether the INED was free of current interest in the issuer.

## Our response and conclusion

99. We agree with the majority view and do not consider it appropriate to extend the cooling off period to three years (Paragraph 97). Although some other jurisdictions<sup>40</sup> have three-year, as opposed to one-year cooling off period, their requirements are in corporate governance codes which are subject to "comply or explain". By comparison, our requirement is a Rule, the compliance of which is mandatory.
100. We do not agree that a person's material interest would cease as soon as the person left the company that had a material interest in the issuer's business activities (Paragraph 98). For the reasons given in the Consultation Paper and in particular, even if the individual would not have actual interests after departing from the company, there would still be a perception issue.
101. In view of the strong support, we will make amendments as proposed.

### Cross-directorships or significant links with other directors

## The proposal

102. We proposed introducing a new RBP A.3.3 to recommend disclosure in the corporate governance report explaining why a proposed INED is still considered independent even though the individual has cross-directorships or significant links with other directors.

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<sup>38</sup> 54 responded to this proposal of which 51 (i.e. 94%) supported. Supporters formed a majority in the following categories: listed companies, professional bodies/industry associations and investment managers.

<sup>39</sup> The UK and Australia require (on a "comply or explain" basis) a three-year cooling off period whilst Singapore requires one year.

<sup>40</sup> For example, UK and Australia.

## Comments received

103. There was clear support for the proposal.<sup>41</sup>
104. Supporters agreed with the rationale set out in the Consultation Paper, i.e. such links may undermine an INED's independence. They also considered the proposal would improve transparency, avoid compromising independence and provide clarity on potential conflict of interest situations.
105. A number of respondents submitted that the proposal should be at least a CP, if not a Rule.
106. Opponents to the proposal argued that the additional disclosure would duplicate the biography of each INED being disclosed in the annual report.<sup>42</sup>

## Our response and conclusion

107. We consider it appropriate to introduce this new recommendation as an RBP (instead of a Rule or CP) (Paragraph 105). Based on the results of such reviews, we may consider strengthening the provision if appropriate and subject to market consultation.
108. We do not agree that the proposal would duplicate the existing disclosure requirements regarding director's biography (Paragraph 106). The current Rules do not require issuers to disclose an INED's cross-directorships or significant links with other directors.
109. In view of the clear support for our proposal, we will make amendments as proposed.

### Family ties

## The proposal

110. We proposed introducing a Note under Rule 3.13 to encourage inclusion of an INED's immediate family members in the assessment of the director's independence.
111. We also proposed adopting the same definition for "*immediate family member*" as Rule 14A.12(1)(a) which defines an "*immediate family member*" as "*his spouse, his (or his spouse's) child or step-child, natural or adopted, under the age of 18 years*".

## Comments received

112. There was overwhelming support from all sectors for both proposals.<sup>43</sup>
113. Supporters believed that family connections could have a strong influence on a person's independence.
114. Several respondents thought that the definition of "immediate family member" should be expanded to include other family members. They suggested that it should be

<sup>41</sup> 59 responded to this proposal of which 51 (i.e. 86%) supported. A majority from the following categories supported the proposal: market practitioners, professional bodies/industry associations and investment managers.

<sup>42</sup> Paragraph 12 of Appendix 16 requires a listed issuer to include brief biographical details of its directors and senior managers. Such details will include name, age, positions held with the listed issuer and other members of the listed issuer's group, length of service with the issuer and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons.

<sup>43</sup> For the proposal to introduce a Note, 53 responded of which 51 (i.e. 96%) supported. Supporters formed a majority in the following categories: listed companies, market practitioners, professional bodies/industry associations and individuals. For the proposal to define "immediate family member" as 14A.12(1)(a), 58 responded of which 57 (i.e. 98%) supported. Supporters formed a majority in the following categories: listed companies, market practitioners, professional bodies/industry associations, investment managers and individuals.

expanded to include parents, siblings, cousins and de facto partners by citing the example of the term defined in the NYSE Listed Company Manual<sup>44</sup>. Some other respondents suggested including children over 18 years of age in the definition.

115. Some respondents preferred the proposal to go further than merely “encourage”. A number of respondents suggested the proposed Note should have been made a Rule, others thought a CP or RBP would be more appropriate.
116. Most opponents to the proposal did not give reasons for their views. A response from one professional association commented that the net may have been cast unnecessarily wide under the proposal. The proposed amendment may give the impression that a candidate’s independence was bound to be compromised by some family connections which might not be true and it could be unfair to the candidate.
117. Several respondents<sup>45</sup> were concerned with the practical difficulties in implementing the Note because the INED candidate may not be fully aware of an immediate family member’s connection with the listed issuer.

### **Our response and conclusions**

118. In light of the overwhelming support for our proposal, we consider it appropriate to introduce the Note. We do not agree with expanding the definition of “immediate family member” to include other family members (Paragraph 114) because INEDs may not be informed by their adult children or siblings of all of their affairs.
119. In response to the comments in Paragraph 116, we believe that whilst a candidate’s independence may not necessarily be compromised by an immediate family member’s connections with the issuers, there is nevertheless a perception of conflict. Such perception is evidenced by the fact that a majority of the respondents to this proposal thought that family connections could have a strong influence on a person’s independence (Paragraph 113).
120. In response to the practical difficulties discussed in Paragraph 117, we do not consider it onerous to enquire with immediate family members (i.e. spouse and children under 18) about their connections with the issuers in the context of the Rule.
121. In view of the clear support for our proposal, we will make amendments as proposed.

## **PART II: NOMINATION POLICY**

(Question 11)

### **The proposal**

122. We proposed amending MDR L.(d)(ii) of Appendix 14 to require an issuer to disclose its nomination policy adopted during the year.

### **Comments received**

123. The proposal received strong support.<sup>46</sup>

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<sup>44</sup> See General Commentary to Section 303A.02(b) of the NYSE Listed Company Manual, accessible at: [http://wallstreet.cch.com/LCMTTools/PlatformViewer.asp?selectednode=chp\\_1\\_4\\_3\\_3&manual=%2Ffcm%2Fsections%2Ffcm-sections%2F](http://wallstreet.cch.com/LCMTTools/PlatformViewer.asp?selectednode=chp_1_4_3_3&manual=%2Ffcm%2Fsections%2Ffcm-sections%2F).

<sup>45</sup> These include a listed issuers’ association and an INED association.

<sup>46</sup> 84 responded to this proposal of which 75 (i.e. 89%) supported. Supporters formed a majority in the following categories: listed companies, market practitioners, professional bodies/industry associations, investment managers and individuals.

124. A significant majority of supporters considered that the proposed amendment would improve transparency around the nomination process.
125. A number of respondents suggested that the Exchange should provide more guidance on quality disclosure to achieve consistencies among issuers and to avoid boilerplate policy statements.
126. A small number of opposing respondents stated that the existing Rules already require companies to disclose a summary of work about nomination committee during the year, which should have incorporated a reasonable level of information in the nomination process. They argued that the proposed amendments were not necessary.

### **Our response and conclusion**

127. A number of the Rule and Code changes discussed in this consultation will result in greater demand being imposed on the board and/or the nomination committee. The nomination committee's work will be subject to even more scrutiny in the future because of the focus on INEDs' independence and board diversity, amongst other corporate governance issues. If the nomination committee carries out its role and function properly, it will lead to better board effectiveness and diversity.<sup>47</sup> The Guidance provides recommendations on the scope of the nomination committee's work and nomination policy (Paragraph 125).
128. The Rules require issuers to disclose a summary of the nomination committee's work (Paragraph 126). However, given the importance of the board and/or nomination committee's role in ensuring the board has a balance of skills, experience and diversity of perspectives, and to give greater focus and transparency of its purpose, the board and/or nomination committee should have a nomination policy and disclose it in the corporate governance report.
129. In view of the clear support for our proposal, we will make the amendment as proposed.

## **PART III: DIRECTORS' ATTENDANCE AT MEETINGS**

(Questions 12 and 13)

### Directors' attendance at general meetings

#### **The proposal**

130. We proposed amending CP A.6.7 by removing the last sentence of the current wording (i.e. they should also attend general meetings and develop a balanced understanding of the views of shareholders).

#### **Comments received**

131. The proposal gained majority support.<sup>48</sup>
132. Supporters agreed with the rationale in the Consultation Paper, i.e., the amendment would clarify inconsistencies in the interpretation of the CP and remove confusion.

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<sup>47</sup> See footnote 4.

<sup>48</sup> 53 responded to this proposal of which 36 (i.e. 68%) supported. A majority from the "listed companies" category supported the proposal. Opponents are mainly investment managers.

133. Opponents were concerned that the proposal would discourage directors from attending general meetings. Several respondents made drafting suggestions to mitigate such concerns.
134. One respondent suggested that attendance at general meetings should be included as an RBP.

### **Our response and conclusion**

135. As stated in the Consultation Paper,<sup>49</sup> the proposed amendment was intended to remove inconsistencies in the market's interpretation of the CP. However, we note comments that by removing the last sentence of the CP, it may give the impression that directors do not need to attend general meetings (Paragraph 133).
136. Having considered the various views and drafting suggestions (Paragraph 133), we will modify our proposal and instead of removing the last sentence of the CP, we will revise it to state:

*“Generally they should also attend general meetings to gain and develop a balanced understanding of the views of shareholders.”*

137. We do not agree with downgrading the CP to an RBP (Paragraph 134) as that would be a step back from the current position.

### Chairman's annual meetings with INEDs

### **The proposal**

138. We proposed revising CP A.2.7 to state that INEDs should meet at least annually with the chairman.

### **Comments received**

139. There is clear support for the proposal.<sup>50</sup>
140. Supporters believed that this would provide a forum for the chairman to listen to views of INEDs in respect of corporate governance improvements, effectiveness of the board, and any other issues they may wish to raise in the absence of other company senior management and executive directors.
141. One supporting respondent suggested that it would be more effective for issuers to designate a senior INED or lead independent director in cases where the chairman is not an INED due to the common practice of a combined chairman and chief executive officer among Hong Kong issuers.

### **Our response and conclusion**

142. We note the suggestion that a senior lead INED should be appointed in case the chairman is not independent (Paragraph 141). As discussed in the Consultation Paper, preliminary discussions with stakeholders suggested that even if the chairman was not independent, it was still beneficial to have an annual meeting between the

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<sup>49</sup> See [http://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/November-2017-Review-of-the-CG-Code?sc\\_lang=en](http://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/November-2017-Review-of-the-CG-Code?sc_lang=en), at page 17.

<sup>50</sup> 56 responded to this proposal of which 47 (i.e. 84%) supported. Supporters formed a majority in the following categories: listed companies, professional bodies/industry associations and investment managers.

chairman and INEDs, excluding NEDs and EDs. Consequently, we considered it unnecessary to introduce a requirement to appoint a senior INED.

143. In view of the clear support for our proposal, we will make amendments as proposed.

## **PART IV: DIVIDEND POLICY**

(Question 14)

### **The proposal**

144. We proposed introducing CP E.1.5 requiring the issuer to disclose its dividend policy in the annual report.

### **Comments received**

145. There is clear support for the proposal.<sup>51</sup>

146. Supporters believed that the disclosure in dividend policies would enhance transparency of issuers and facilitate shareholders and investors to make informed investment decisions.

147. Several respondents submitted that the proposal should be a Rule, as opposed to a CP, to align with international practices in jurisdictions such as the US, UK and China.

### **Our response and conclusion**

148. We consider it appropriate to introduce this new requirement as a CP, allowing issuers the flexibility to explain if they do not disclose a dividend policy (Paragraph 147).

149. In view of the strong support for our proposal, we will make amendments as proposed.

## **PART V: ELECTRONIC DISSEMINATION OF CORPORATE COMMUNICATIONS – IMPLIED CONSENT**

(Question 15)

### **Seek market views**

150. We sought market views on whether the Rules should be amended to allow shareholders' consent to be implied for electronic dissemination of corporate communications by issuers.

### **Comments received**

151. A significant majority of respondents supported amending the Rules to allow shareholders' consent to be implied for electronic dissemination of corporate communications by issuers.<sup>52</sup> Supporters submitted that electronic dissemination would be a more efficient and environmentally-friendly means for corporate communications than hard copy dissemination.

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<sup>51</sup> 55 responded to this proposal of which 51 (i.e. 93%) supported. Supporters formed a majority in the following categories: listed companies, market practitioners, professional bodies/industry associations and investment managers.

<sup>52</sup> 54 responded to this question of which 46 (i.e. 85%) supported. Supporters formed a majority in the following categories: listed companies and market practitioners.

152. A small minority of respondents opposed introducing Rules to allow implied consent for electronic corporate communications because they did not consider that to do so would adequately protect the interest of investors who were less “tech-savvy”. Also, some indicated the fact that jurisdictions such as the UK and Australia do not permit implied consent.

**Our response and conclusion**

153. We note the general support for a Rule change in this area but as we stated in the Consultation Paper, we would not propose to adopt such a regime unless and until Hong Kong’s company law is amended to permit implied consent.

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## APPENDIX I: LIST OF RESPONDENTS

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### Listed Companies (15 in total)

- 1 AIA Group Limited
- 2 Cathay Pacific Airways Limited<sup>53</sup>
- 3 CK Asset Holdings Limited
- 4 CK Hutchison Holdings Limited<sup>54</sup>
- 5 CLP Holdings Limited
- 6 Henderson Investment Limited<sup>55</sup>
- 7 Hong Kong Ferry (Holdings) Company Limited
- 8 HSBC Holdings plc
- 9 Hysan Development Company Limited
- 10 MGM China Holdings Limited
- 11 MTR Corporation Limited
- 12-15 4 listed companies requested anonymity

### Market Practitioners (17 in total)

- 16 Ashurst Hong Kong
- 17 Barclays Capital Asia Limited
- 18 Ernst & Young
- 19 Freshfields Bruckhaus Deringer
- 20 Herbert Smith Freehills
- 21 Jeffrey Mak Law Firm
- 22 KPMG
- 23 Pinsent Masons
- 24 PricewaterhouseCoopers
- 25 SHINEWING Risk Services Limited
- 26 Slaughter and May
- 27 SW Corporate Services Group Ltd
- 28 Tricor Services Limited
- 29-32 4 market practitioners requested anonymity

### Professional Bodies and Industry Associations (15 in total)

- 33 ACCA Hong Kong<sup>56</sup>
- 34 Asian Corporate Governance Association
- 35 Council of Institutional Investors
- 36 French Chamber of Commerce and Industry in Hong Kong
- 37 Hong Kong Institute of Certified Public Accountants
- 38 The American Chamber of Commerce in Hong Kong

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<sup>53</sup> Cathay Pacific Airways Limited's submission is identical to submissions of Hong Kong Aircraft Engineering Company Limited, Swire Pacific Limited and Swire Properties Limited. Therefore, we count the four submissions as one response.

<sup>54</sup> CK Hutchison Holdings Limited's submission is identical to Hutchison Telecommunications Hong Kong Holdings Limited's submission. Therefore, we count the two submissions as one response.

<sup>55</sup> Henderson Investment Limited's submission is identical to Henderson Land Development Company Limited's submission. Therefore, we count the two submissions as one response.

<sup>56</sup> The Association of Chartered Certified Accountants Hong Kong.

- 39 The Australian Chamber of Commerce in Hong Kong & Macau
- 40 The Chamber of Hong Kong Listed Companies
- 41 The Golden Bauhinia Women Entrepreneur Association
- 42 The Hong Kong Independent Non-Executive Director Association
- 43 The Hong Kong Institute of Chartered Secretaries
- 44 The Hong Kong Institute of Directors
- 45 Thirty Percent Coalition Institutional Investor Committee Chairs
- 46 The Law Society of Hong Kong
- 47 1 professional body and industry association requested anonymity

### **Investment Managers (10 in total)**

- 48 BlackRock
- 49 British Columbia Investment Management Corporation
- 50 Cartica Management, LLC
- 51 EdenTree Investment Management Ltd
- 52 Hermes Equity Ownership Services Limited
- 53 Legal and General Investment Management
- 54 PGGM Investments
- 55 Robeco
- 56 St. James's Place Wealth Management Hong Kong
- 57 1 investment manager requested anonymity

### **Non-Profit Organisations (5 in total)**

- 58 100 Women in Finance
- 59 30% Club HK
- 60 Community Business Limited<sup>57</sup>
- 61 Women's Foundation
- 62 Women in Law Hong Kong

### **Individuals (20 in total)**

- 63 Cheng Yuk Wo
- 64 Fiona Nott
- 65 Gordon Jones
- 66 Janice Yau
- 67 Joanna Hayes
- 68 Krisztina Mirjam Anspach
- 69 Leung Sze Man
- 70 Wong Kong Chi
- 71 Yu Cheuk Ho Matthew
- 72-82 11 individuals requested anonymity

### **Other Entities (9 in total)**

- 83 Compliance Plus Consulting Limited

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<sup>57</sup> As Community Business Limited's submission is identical to Katharine Vernon's submission, we counted the two submissions as one response.

84	CUHK Business School
85	Democratic Party Legislative Councillors' Office –涂謹申立法會議員 (Hon James TO Kun-sun)
86	Korum Consulting Limited
87	Meraki Executive Search and Consulting
88	Out Leadership
89	Russell Reynolds Associates (HK) Ltd
90	Thomson Reuters - Hong Kong
91	1 other entity requested anonymity

*Remarks:*

- 1. If the entire body of the response is identical, word-for-word, with the entire body of another response. It will be recorded as a “duplicate response” and it will not be counted for the purpose of a quantitative and qualitative analysis of the responses.*
- 2. The total number of responses is calculated according to the number of submissions received and not the underlying members that they represent.*

## APPENDIX II: SUMMARY RESULT OF QUANTITATIVE ANALYSIS

Proposals in the Consultation Paper	Feedback		
	Support	Against	Number of Respondents <sup>58</sup>
1. Amendment to CP A.5.5 so that in addition to the current requirements, the board should also explain, if the proposed INED will be holding his seventh (or more) listed company directorship, why he would still be able to devote sufficient time to the board	57 (84%)	11 (16%)	68 (75%)
2. Upgrade CP A.5.6 to a Rule requiring issuers to have a diversity policy and to disclose the policy or a summary of it in their corporate governance reports	85 (97%)	3 (3%)	88 (97%)
3. Amend CP A.5.5 that it requires the board to state in the circular to shareholders accompanying the resolution to elect the director: <ul style="list-style-type: none"> <li>i. the process used for identifying the nominee;</li> <li>ii. the perspectives, skills and experience that the person is expected to bring to the board; and</li> <li>iii. how the nominee would contribute to the diversity of the board.</li> </ul>	75 (88%)	10 (12%)	85 (93%)
4. Amend MDR L.(d)(ii) to reflect the upgrade of CP A.5.6 to a Rule	85 (98%)	2 (2%)	87 (96%)
5. Revise Rule 3.13 (3) so that there is a three-year cooling off period for professional advisers before they can be considered independent, instead of the current one year	32 (58%)	23 (42%)	55 (60%)
6. Revise CP C.3.2 so that there is a three-year cooling off period for a former partner of the issuer's existing audit firm before he can be a member of the issuer's audit committee	37 (69%)	17 (31%)	54 (59%)
7. Revise Rule 3.13(4) to introduce a one-year cooling off period for a proposed INED who has had material interests in the issuer's principal business activities in the past year	51 (94%)	3 (6%)	54 (59%)
8. Introduce a new RBP A.3.3 (i.e. voluntary) to recommend disclosure of INEDs' cross-directorships in the Corporate	51 (86%)	8 (14%)	59 (65%)

<sup>58</sup> Out of 91 total submissions.

Proposals in the Consultation Paper	Feedback		
	Support	Against	Number of Respondents <sup>58</sup>
Governance Report			
9. Introduce a Note under Rule 3.13 to encourage inclusion of an INED's immediate family members in the assessment of the director's independence	51 (96%)	2 (4%)	53 (58%)
10. Adopt the same definition for " <i>immediate family member</i> " as Rule 14A.12(1)(a) which defines an " <i>immediate family member</i> " as " <i>his spouse, his (or his spouse's) child or step-child, natural or adopted, under the age of 18 years</i> "	57 (98%)	1 (2%)	58 (64%)
11. Amend MDR L.(d)(ii) of Appendix 14 to require an issuer to disclose its nomination policy adopted during the year	75 (89%)	9 (11%)	84 (92%)
12. Amend CP A.6.7 by removing the last sentence of the current wording (i.e. they should also attend general meetings and develop a balanced understanding of the views of shareholders.)	36 (68%)	17 (32%)	53 (58%)
13. Revise CP A.2.7 to state that INEDs should meet at least annually with the chairman	47 (84%)	9 (16%)	56 (62%)
14. Introduce CP E.1.5 requiring the issuer to disclose its dividend policy in the annual report	51 (93%)	4 (7%)	55 (60%)
15. Allow shareholders' consent to be implied for electronic dissemination of corporate communications by issuers	46 (85%)	8 (15%)	54 (59%)

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## APPENDIX III: MAIN BOARD LISTING RULE AMENDMENTS

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### Chapter 3

#### GENERAL

#### AUTHORISED REPRESENTATIVES, DIRECTORS, BOARD COMMITTEES AND COMPANY SECRETARY

##### Directors

...

3.13 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:-

...

- (3) is or was a director, partner or principal of a professional adviser which currently provides or has within ~~one year~~ two years immediately prior to the date of his proposed appointment provided services, or is or was an employee of such professional adviser who is or has been involved in providing such services during the same period, to:
- (a) the listed issuer, its holding company or any of their respective subsidiaries or core connected persons; or
- (b) any person who was a controlling shareholder or, where there was no controlling shareholder, any person who was the chief executive or a director (other than an independent non-executive director), of the listed issuer within ~~one year~~ two years immediately prior to the date of the proposed appointment, or any of their close associates;
- (4) currently, or within one year immediately prior to the date of the person's proposed appointment, has or had a material interest in any principal business activity of or is or was involved in any material business dealings with the listed issuer, its holding company or their respective subsidiaries or with any core connected persons of the listed issuer;

...

- (8) ...

Notes: 1. *The factors set out in rule 3.13 ...*

2. *When determining the independence of a director under rule 3.13, the same factors should also apply to the director's immediate family members. "Immediate family member" is defined under rule 14A.12(1)(a).*

## Chapter 13

### EQUITY SECURITIES

#### CONTINUING OBLIGATIONS

13.92 The nomination committee (or the board) shall have a policy concerning diversity of board members, and shall disclose the policy on diversity or a summary of the policy in the corporate governance report.

*Note: Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.*

## Appendix 14

### CORPORATE GOVERNANCE CODE AND CORPORATE GOVERNANCE REPORT

...

#### A.2 Chairman and Chief Executive

##### Code Provisions

...

A.2.7 The chairman should at least annually hold meetings with the independent non-executive directors (~~including independent non-executive directors~~) without the presence of other executive directors present.

...

#### A.3 Board composition

...

##### **Recommended Best Practice**

A.3.3 The board should state its reasons if it determines that a proposed director is independent notwithstanding that the individual holds cross-directorships or has significant links with other directors through involvements in other companies or bodies.

Note: A cross-directorship exists when two (or more) directors sit on each other's boards.

...

## A.5 Nomination Committee

...

### Code Provisions

...

- A.5.5 Where the board proposes a resolution to elect an individual as an independent non-executive director at the general meeting, it should set out in the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting:
1. the process used for identifying the individual and why the board believes the individual why they believe he should be elected and the reasons why they it considers consider him the individual to be independent;
  2. if the proposed independent non-executive director will be holding their seventh (or more) listed company directorship, why the board believes the individual would still be able to devote sufficient time to the board;
  3. the perspectives, skills and experience that the individual can bring to the board; and
  4. how the individual contributes to diversity of the board.

~~A.5.6 The nomination committee (or the board) should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the corporate governance report.~~

~~Note: Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.~~

...

## A.6 Responsibilities of directors

...

### Code Provisions

...

- A.6.7 Independent non-executive directors and other non-executive directors, as equal board members, should give the board and any committees on which they serve the benefit of their skills, expertise and varied backgrounds and qualifications through regular

attendance and active participation. Generally they ~~They~~ should also attend general meetings to gain and develop a balanced understanding of the views of shareholders.

...

### **C.3 Audit Committee**

...

#### **Code Provisions**

...

C.3.2 A former partner of the issuer's existing auditing firm should be prohibited from acting as a member of its audit committee for a period of 4 two years from the date of his the person ceasing:

(a) to be a partner of the firm; or

(b) to have any financial interest in the firm,

whichever is later.

...

## **E.COMMUNICATION WITH SHAREHOLDERS**

### **E.1 Effective communication**

...

#### **Code Provisions**

...

E.1.5 The issuer should have a policy on payment of dividends and should disclose it in the annual report.

...

**CORPORATE GOVERNANCE REPORT**  
**MANDATORY DISCLOSURE REQUIREMENTS**

...

**L. BOARD COMMITTEES**

The following information for each of the remuneration committee, nomination committee, audit committee, risk committee, and corporate governance functions:

...

- (d) a summary of the work during the year, including:
  - (ii) for the nomination committee, ~~determining~~ disclosing the policy for the nomination of directors, performed by the nomination committee or the board of directors (if there is no nomination committee) during the year. ~~This includes the~~ The nomination procedures and the process and criteria adopted by the nomination committee or the board of directors (if there is no nomination committee) to select and recommend candidates for directorship during the year. ~~If the nomination committee (or the board) has a policy concerning diversity, this~~ This section should also include the board's policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives;

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## APPENDIX IV: GEM LISTING RULE AMENDMENTS

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### Chapter 5

#### GENERAL

#### DIRECTORS, COMPANY SECRETARY, BOARD COMMITTEES, AUTHORISED REPRESENTATIVES AND CORPORATE GOVERNANCE MATTERS

##### Directors

...

5.09 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:-

...

- (3) is or was a director, partner or principal of a professional adviser which currently provides or has within ~~one year~~ two years immediately prior to the date of his proposed appointment provided services, or is or was an employee of such professional adviser who is or has been involved in providing such services during the same period, to:
- (a) the listed issuer, its holding company or any of their respective subsidiaries or core connected persons; or
  - (b) any person who was a controlling shareholder or, where there was no controlling shareholder, any person who was the chief executive or a director (other than an independent non-executive director), of the listed issuer within ~~one year~~ two years immediately prior to the date of the proposed appointment, or any of their close associates;
- (4) currently, or within one year immediately prior to the date of the person's proposed appointment, has or had a material interest in any principal business activity of or is or was involved in any material business dealings with the issuer, its holding company or their respective subsidiaries or with any core connected persons of the issuer;

...

(8) ...

Notes: 1. *The factors set out in rule 5.09 ...*

2. *When determining the independence of a director under rule 5.09, the same factors should also apply to the director's immediate family members. "Immediate family member" is defined under rule 20.10(1)(a).*

## Chapter 17

### EQUITY SECURITIES

#### CONTINUING OBLIGATIONS

17.104 The nomination committee (or the board) shall have a policy concerning diversity of board members, and shall disclose the policy on diversity or a summary of the policy in the corporate governance report.

*Note: Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.*

## Appendix 15

### CORPORATE GOVERNANCE CODE AND CORPORATE GOVERNANCE REPORT

...

#### A.2 Chairman and Chief Executive

##### Code Provisions

...

A.2.7 The chairman should at least annually hold meetings with the independent non-executive directors (including independent non-executive directors) without the presence of other executive directors present.

...

#### A.3 Board composition

...

##### **Recommended Best Practice**

A.3.3 The board should state its reasons if it determines that a proposed director is independent notwithstanding that the individual holds cross-directorships or has significant links with other directors through involvements in other companies or bodies.

Note: A cross-directorship exists when two (or more) directors sit on each other's boards.

...

## A.5 Nomination Committee

...

### Code Provisions

...

A.5.5 Where the board proposes a resolution to elect an individual as an independent non-executive director at the general meeting, it should set out in the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting:

1. the process used for identifying the individual and why the board believes the individual why they believe he should be elected and the reasons why they it considers consider him the individual to be independent;
2. if the proposed independent non-executive director will be holding their seventh (or more) listed company directorship, why the board believes the individual would still be able to devote sufficient time to the board;
3. the perspectives, skills and experience that the individual can bring to the board; and
4. how the individual contributes to diversity of the board.

~~A.5.6 The nomination committee (or the board) should have a policy concerning diversity of board members, and should disclose the policy or a summary of the policy in the corporate governance report.~~

~~Note: Board diversity will differ according to the circumstances of each issuer. Diversity of board members can be achieved through consideration of a number of factors, including but not limited to gender, age, cultural and educational background, or professional experience. Each issuer should take into account its own business model and specific needs, and disclose the rationale for the factors it uses for this purpose.~~

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### Code Provisions

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Generally they ~~They~~ should also attend general meetings to gain and develop a balanced understanding of the views of shareholders.

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#### **Code Provisions**

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...

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  - (ii) for the nomination committee, ~~determining~~ disclosing the policy for the nomination of directors, performed by the nomination committee or the board of directors (if there is no nomination committee) during the year. This includes the ~~The~~ nomination procedures and the process and criteria adopted by the nomination committee or the board of directors (if there is no nomination committee) to select and recommend candidates for directorship during the year. ~~If the nomination committee (or the board) has a policy concerning diversity, this~~ This section should also include the board's policy or a summary of the policy on board diversity, including any measurable objectives that it has set for implementing the policy, and progress on achieving those objectives;

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