

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:

<https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017111.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

PART I: INDEPENDENT NON-EXECUTIVE DIRECTORS

Overboarding and INED's time commitment

1. Do you agree with our proposed amendment to Code Provision (“CP”) A.5.5 (on a “comply or explain” basis) so that in addition to the CP’s current requirements, the board should also explain, if the proposed independent non-executive director (“INED”) will be holding his seventh (or more) listed company directorship, why he would still be able to devote sufficient time to the board?

Yes

No

Please give reasons for your views.

Indeed I would go further than that.
For a few years back in the early 2000s, I acted as INED for 6 listed companies in HK. I was an accountant and a retired merchant banker, knowledgeable in how a Board works and can carry out my duties efficiently. If my workload can be spread evenly, there should be no problem in devoting sufficient time to each directorship. However, as we all aware, most listed companies have a December yearend. So the workload is extremely heavy in certain months (particularly in March and August when final and interim results are to be announced respectively). Clashes of meetings are considered a minor problem. The real problem is that you simply do not have enough time to review the information before such meetings, which means that even if the INED attend the meetings, he or she is unlikely to be well prepared. If putting a cap on the maximum number of INE directorship is facing too much resistance, I propose that any INED proposing to hold his fifth (?) directorship be subject to independent shareholders' vote. After all, it is their interest which is supposed to be protected. So it must be fair to allow them a bigger say if there is doubt on whether the person to be elected can devote sufficient time to perform his duties.

Board diversity

2. Do you agree with our proposals to upgrade CP A.5.6 (on a “comply or explain” basis) 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?

Yes

No

Please give reasons for your views.

I don't think it make much difference. Most companies adopt a very generic policy (most just copy from others!).

3. Do you agree with our proposal to amend CP A.5.5 that it requires (on a “comply or explain” basis) 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 the diversity of the board.

Yes

No

Please give reasons for your views.

More transparency is always better. But since my view is that most diversity policy is very generic, the additional disclosure is not going to help improve the real situation by much.

4. Do you agree with our proposal to amend Mandatory Disclosure Requirement L.(d)(ii) to reflect the upgrade of CP A.5.6 (on a “comply or explain” basis) 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?

Yes

No

Please give reasons for your views.

Same as Q. 2&3 above.

Factors affecting INED's independence

A. Cooling off periods for former professional advisers

5. Do you agree with our proposal to 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?

Yes

No

Please give reasons for your views.

I think the issue is more complicated than a simple yes and no. Take a partner in a legal firm as an example. If this person remains a partner in the legal firm and the legal firm ceases to provide advice to the listed company, then I think the cooling off period should be extended to 3 years (meaning that the legal firm has ceased providing advice to the listed company). As the one year cooling off period is too short and the partner may not act independently hoping to receive further appointment from the listed company. However, if the partner retires from the legal firm, then I think his cooling off period should be one year. His personal interest apparently ceases when he retires and I see no reason to impose a long cooling off period.

6. Do you agree with our proposal to revise CP C.3.2 (on a "comply or explain" basis) 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?

Yes

No

Please give reasons for your views.

Same as Q. 5.

B. Cooling off period in respect of material interests in business activities

7. Do you agree with our proposal to 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?

Yes

No

Please give reasons for your views.

This is similar to the issue in Q. 5&6.
For example, a senior executive who works in the listed company's supplier may have a material interests. But once he ceases (or retires) from that supplier, his interest may cease to exist and I see no reason to impose a cooling off period.

C. Cross-directorships or Significant Links with other Directors

8. Do you agree with our proposal to introduce a new Recommended Best Practice A.3.3 (i.e. voluntary) to recommend disclosure of INEDs' cross-directorships in the Corporate Governance Report?

Yes

No

Please give reasons for your views.

Cross-directorship clearly affect independence. It shold be added to R3.13(3) rather than imposed as a RBP.

D. Family ties

9. Do you agree with our proposal to 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?

Yes

No

Please give reasons for your views.

Why just "encouragement"? The R3.13 tests should apply to the INED's immediate family members as a rule.

10. Do you agree with our proposal to adopt 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"?

Yes

No

Please give reasons for your views.

PART II: NOMINATION POLICY

11. Do you agree with our proposal to amend Mandatory Disclosure Requirement L.(d)(ii) of Appendix 14 to require an issuer to disclose its nomination policy adopted during the year?

Yes

No

Please give reasons for your views.

The appointment of directors is such a non-frequent event that I do not think a "policy" is required. I am always of the view that the existence of a Nomination Committee is unnecessary. The appointment of directors should be a Board responsibility. It may appoint an ad hoc sub-committee to search for a candidate or review a candidate's suitability when the occasion arises. The circumstance which leads to the proposed appointment of a new director is in each case quite unique and different consideration may apply. The adoption of a policy will encourage the use of a generic form which provides no additional value.

PART III: DIRECTORS' ATTENDANCE AT MEETINGS

Directors' attendance at general meetings

12. Do you agree with our proposal to amend CP A.6.7 (on a "comply or explain" basis) 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.)?

Yes

No

Please give reasons for your views.

Remove the confusion.

Chairman's annual meetings with INEDs

13. Do you agree with our proposal to revise CP A.2.7 (on a "comply or explain" basis) to state that INEDs should meet at least annually with the chairman?

Yes

No

Please give reasons for your views.

I think there is a lot of confusion to the purpose of this meeting requirement. My view is that the purpose of such meeting is to provide a forum for the "non-management" directors to discuss the performance of the "management" directors. The question of "independence" is therefore a non-issue. The requirement should be that the NEDs should meet at least once a year. So if the Chairman is an ED, he should not attend. The chairman of that meeting (not necessarily the Chairman of the Board) should provide feedback to the EDs after the meeting.

PART IV: DIVIDEND POLICY

14. Do you agree with our proposal to introduce CP E.1.5 requiring (on a “comply or explain” basis) the issuer to disclose its dividend policy in the annual report?

Yes

No

Please give reasons for your views.

I think you should extend the requirement to disclosure of any deviation (and reason thereof) of such policy in the CG Report.

PART V: ELECTRONIC DISSEMINATION OF CORPORATE COMMUNICATIONS – IMPLIED CONSENT

15. Do you think that the Rules should be amended to allow shareholders’ consent to be implied for electronic dissemination of corporate communications by issuers?

Yes

No

Please give reasons for your views.

But shareholders must be given the option to receive corporate communications in hard copies free of charge should they require so.

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