

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.

I have been acting as an INED for over 15 years and now sit on the boards of 13 listed companies. The proposed amendment implies a person should not sit on more than six boards of listed companies as INED; or at least this would be inappropriate in the eyes of the Stock Exchange. Stock Exchange has quoted ONE reference of "authority" to the Institutional Shareholder Services, Inc's 2016 Benchmark Policy Recommendations for HK. It would be more appropriate if the Stock Exchange can make available statistical figures of INEDs' attendance at board and committee meetings compared with the number of boards served by them. As well, there should be some reference to individual shareholders' views.

(1) Whether an INED is able to devote sufficient time is a matter of his own circumstances and complexity of the listed entity. For someone with a very demanding full time job, one INED position would require time he could not afford. For someone without a full time job but has a very keen interest on the corporate world, he may be willing to take up a large number of directorships in listed entities. A directorship in a very complex listed entity may command the time commitment of several more generic listed entities in total.

(2) The relationship between time commitment and number of boards is not directly proportional. There is an efficiency in it. Particularly when it comes to complex and contentious issues. For instance, there are currently lengthy discussions on new accounting standards (HKFRS 8, 15 or 16) to be implemented in the coming years; once you get the grips of it in one listed entity, you could easily apply to many other listed entities without the need to spend significantly more time. Another good example is the safety precaution against SARS; safety precautions developed in one listed entity can be implemented for other listed entities.

(3) In the eyes of minority shareholders, an INED who sits on a number of boards may have more credibility over someone who sits on one board.

(4) The Stock Exchange has always been very careful in not giving out a cap in past consultations. This time around a number is highlighted. In my view, this has undermined other important issues such as attendance at meetings, INED's capabilities, diligence, qualifications and age.

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.

This would bring over emphasis on issues which probably would not add more value to the current practice and at best lead to positive discrimination. Besides, issuers would likely issue generic policy which does not bring solution

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.

This would not be necessary because shareholders would raise relevant questions at the time of voting and resumes are included in the circular.

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.

Like the current ESG reporting, this would only create fee earnings for professionals

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.

One reason why an issuer would engage a former professional adviser as INED is his understanding and knowledge of the group. After three years, there would be significant dilution in this.

The time when an independence issue arises is when there is an investigation into the issuer's affairs which involves the professional adviser INED. This is more likely to happen later (few years afterwards) rather than immediately. Hence, a three year cooling off period would not be long enough from this perspective. Besides, a diligent professional adviser INED would declare interest if such independence issue arises.

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.

My view is similar to Answer 5 above save and except the audit partner would more likely to have an independence issue. Nevertheless, this is counter-balanced by the fact that most of the listed issuers would engage the minimum number of INEDs according to the Listing Rules. Barring a former audit partner from the AC would require alternative arrangement to fill the vacancy. My suggestion is the former partner should not be chairman of the AC for a number of years.

Consultation Paper Para 68 "We believe there are mixed views about whether there is a shortage of potential INEDs in the market." I would take this opportunity to express my view that the point is not necessarily a shortage of potential INEDs in the market, but whether there is a shortage of capable INEDs. Especially when the Stock Exchange is concerned with board diversity issues.

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.

One year is an appropriate 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.

Nevertheless, exemption should be given to cross-directorships which are all INED positions.

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.

However, one has to bear in mind a proposed INED might not have full information of the spouse.

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.

Appropriate

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.

It would only lead to disclosing a generic policy and not add any 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.

Agree with your para 94-97

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 would prefer to abolish this requirement completely. If the INEDs want to meet with the chairman to discuss management issues, they would make arrangement.

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.

This would be appropriate for issuers with stable profitabilities.

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.

Consultation Paper para 120

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