

## 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.

#### 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.

- HKEX must lead by example and change ALL of its references in the CPs and the Rules from "he", "him" and "his" to gender-neutral language (e.g. "s/he", "him/her", "his or hers", etc.). We note that all the proposed amendments in the Consultation Paper still contain these male references despite trying to address board diversity as one of the major changes.

- The Consultation Paper only refers to "board diversity" without any specific references to the importance of gender. At minimum, the Rule should require that the company's diversity policy includes a specific focus on gender diversity because having a vague or opaquely worded policy will do little to increase diversity.

- The diversity policy should also contain measureable objectives to achieve gender diversity and HKEX should give specific guidance on the process for board nomination and board diversity review, such as providing a recommended best practice and guidelines for diversity policy.

- With no gender-specific measures nor a requirement for boards to set measurable objectives to improve, little will change.

- As a major financial centre with such a large pool of male and female talent, Hong Kong should be a leader on board diversity, not lagging behind. As of September 2017, only 13.3% of board members of Hang Seng Index companies are women, and of these 50 companies, there remain 10 companies with all male boards. This is despite implementing CP A.5.6. Hong Kong is catching up to other international markets at a snail's pace. Other markets have seen increased momentum due largely in part to regulatory changes and focus on increasing gender diversity, without specific quotas. The increase in the representation of women on Hang Seng Index boards from 9.4% in 2013 to 13.3% in 2017 (an increment of only 3.9% in almost 5 years) stands in stark contrast to Australia, Canada, the United States and the United Kingdom, where the representation of women on corporate boards now exceeds 20%, with the United Kingdom leading with 27%.

Hong Kong's listed companies seem to be unaware of the business case for gender diversity, yet from the many examples of and studies on the benefits of gender diversity, the benefits are clear:

- companies in the top quartile for gender diversity are 22% more likely to have financial returns above their respective national industry medians, and the financial case for gender diversity is growing year on year (e.g. up 15% since 2014) (McKinsey's Diversity Matters II research 2017);

- the damage to the least diverse companies is also growing year on year as companies in the bottom quartile for gender and ethnicity are falling behind as opposed to merely not leading (McKinsey's Diversity Matters II research 2017)

- diversity recruits and promotes the most talented, improves decision-making, increases customer insight, motivates employees and improves an organisation's global image and relevant - all factors we want for Hong Kong.

- WILHK calls on HKEX to implement the above measures to mandate greater transparency and accountability, taking a leading role in raising awareness in diversity issues.

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.

CP A.5.5 needs to bring more transparency to the appointment of directors because having strong corporate governance will instill greater investor confidence.

We suggest that HKEX:

- add more specifications as to the identification and appointment process, including how the nominee would contribute to the diversity of the board by reference to the company's diversity policy and HKEX's guidelines and best practices, how the nominee complements the existing board members and what other perspectives, skills, experience or other characteristics that nominee would bring to the board; and

- allow minority shareholders to have a greater voice by requiring separate disclosure of the minority shareholders' vote in independent directors elections, and where there is not majority support from the minority shareholders, such directors should be required to stand for re-election at each AGM until a majority occurs.

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.

In addition to having a mandatory diversity policy with specific references to gender diversity, companies should also be required to report on that financial year's progress based on measurable objectives as set out in its diversity policy, including setting out the proportion of males and females at each level of the organisation.

**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.

No comment
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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.

No comment
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**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.

No comment

**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.

**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.

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.

Please replace the references to "his" with more gender inclusive language such as "his/her" or "his or her".

**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 circular to shareholders should include an infographic to show the composition of the board by reference to diversity, including gender.  
- The disclosure of the nomination policy should also include an evaluation of the performance of each director and whether the board has met the measureable objectives as set out in the diversity policy, with specific reference to gender diversity (at board, senior executive positions and across all levels of the company) and if not, what the progress is and how this can be improved.

### **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.

No comment

#### **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.

No comment

**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.

No comment

**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.

Electronic communication is a very common mode of written communication in Hong Kong, and is a much more efficient and environmentally responsible method of communication than dissemination of information through paper.

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