

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.

In responding to this consultation, we have only commented on the questions that touch on the issue of diversity given this is a broader social issue and one upon which we believe it is important to take a stand. As a law firm operating in 26 countries across Asia Pacific, EMEA and North America, we take an inclusive approach to diversity including initiatives

encompassing gender, race, age, religion and belief, sexual orientation, disability and social inclusion. We recognise the importance of diversity in the workplace and to our clients. We welcome HKEX's proposal to elevate from a Code Provision to a Listing Rule the requirement for issuers to have a diversity policy and to disclose that policy, or a summary of it, in their corporate governance report.

As noted in the HKEX Consultation Paper, numerous studies show that a diverse board can have a positive effect on a company's performance. Increased diversity can not only promote effective decision making and enhanced corporate governance, but can ultimately lead to improved financial performance.

The HKEX Consultation Paper benchmarked Hong Kong's regime against other jurisdictions and noted it was broadly equivalent to its peers. However, on 5 December 2017, the Financial Reporting Council published its consultation on a new UK Corporate Governance Code which puts greater focus on diversity and takes a more ambitious approach compared to that proposed for Hong Kong in the HKEX Consultation Paper.

In order to maintain Hong Kong's position as a leading, international stock exchange with corporate governance policies in line with global best practice, we would encourage HKEX to review the proposed developments in the United Kingdom and consider taking a stronger position on the issue of diversity by adopting appropriate aspects of the Financial Reporting Council's approach.

In particular, we encourage HKEX to consider whether the drafting of the proposed new Listing Rule 13.92 should be amended to require listed companies to specifically consider gender, as well as social and ethnic background, as a factor in assessing diversity. We understand that the existing drafting (tracking the language in the existing Code Provision A.5.6) is drafted to give issuers flexibility to draft their policy to reflect their business needs. However, in our view, the need to address diversity from at least a gender, social and ethnic background perspective is sufficiently important to merit mandatory consideration as part of a diversity policy.

In addition to making it a Listing Rule requirement for listed companies to have and disclose a diversity policy, we consider that it would be useful for HKEX to provide additional guidance on the required content of such a policy setting out clear and allocated responsibilities. We suggest that the guidance should provide good and best practice suggestions to assist listed companies to achieve the expected corporate governance and diversity standards. Over time, HKEX may consider making aspects of the guidance mandatory, particularly if there are important areas where listed issuers are non-compliant. The Revised Guidance on Board Effectiveness proposed by the Financial Reporting Council as part of the consultation exercise announced on 5 December 2017 provides a good example of practical guidance to companies and we would encourage HKEX to consider a similar approach in Hong Kong.

In particular, the Revised Guidance on Board Effectiveness provides guidance on the role of the nomination committee, including in setting diversity objectives and strategies. It provides practical examples of steps nomination committees can consider, including for example setting stretching targets towards increased diversity and commitments to more diverse shortlists and interview panels. We believe similar guidance would be welcomed by the business community in Hong Kong.

The Revised Guidance on Board Effectiveness also covers other areas such as succession planning and evaluating the performance of boards which also have a bearing on board composition and diversity.

We also note that the Revised UK Corporate Governance Code issued by the Financial Reporting Council on 5 December 2017 includes (in Section 3, Principle J) language to ensure board appointments and succession plans are "based on merit and objective criteria, and promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths." In addition, Principle K requires a regular evaluation of the board, covering diversity along with other factors such as the balance of skills, experience, independence and knowledge. We invite HKEX to consider whether the Corporate Governance Code should be amended to reflect a similar approach. In particular whether Code Provision A.4 should be amended with a requirement for diversity to be considered for Hong Kong board appointments and whether enhancements should be made to Recommended Best Practice B.1.9 in respect of board evaluation.

As a final point, we would encourage HKEX to consider adopting gender neutral drafting for the Listing Rules. In the context of language referring to directors, the current use in the Listing Rules of "he/his/him" serves to reinforce gender stereotypes and is not helpful in striving for greater gender diversity.

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.

Again, we welcome HKEX's proposed amendment.

To promote efficacy, we suggest that the circular also include an explanation as to how the identification process has contributed to the diversity of the board, referencing the diversity policy of the company.

In order to increase the focus on diversity of boards and to increase transparency, we also suggest that HKEX could consider adding additional disclosure requirements for circulars relating to the appointment or re-election of any director (irrespective of whether they are independent non-executive directors). Such additional disclosure could include numerical and graphical information to illustrate the composition of the board, both before and after the appointment of the nominated director(s):

- by reference to the factors identified in the company's diversity policy;
- by length of service on the board; and
- by the matrix of skills across all board members.

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.

We welcome this recommendation to bring the mandatory disclosure requirement in line with the proposed upgrade of Code Provision A.5.6 to a Listing Rule which requires disclosure of a company's diversity policy (or summary of it). This will help raise the focus on diversity in listed companies and ensure greater accountability through disclosure.

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.

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.

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.

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.

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.

We support the proposal to require companies to disclose their nomination policy adopted during the year. We believe that this will enhance transparency and promote compliance, which should ultimately improve board diversity.

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.

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.

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.

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.

- End -