

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/cp20171111.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.

We disagree with adopting a numerical threshold in this CP. We suggest that the CP simply requires the board to make a statement that it has performed a review as to whether all its INEDs have sufficient time to fulfill their duties (i.e. regardless of how many positions each one of them holds) and that it believes all of them do have sufficient time.

The reason we do not agree with the threshold approach is that it is not certain that seven companies is the point at which INEDs universally experience time commitment issues. It could be more or less than seven depending on the individual's circumstances, e.g. seven positions may be manageable if they are all with smaller listed companies and whether the INED has full-time employment is also a factor that should be considered.

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.

Agree, although moving this requirement from a CP to an LR makes it mandatory for a listed company to have a diversity policy, this alone cannot be relied upon to drive diversity in practice which depends on whether the policy is implemented. We suggest that the approach should be to establish an LR requiring companies to state the progress of the implementation of their policy (this is currently just a CP) and to introduce disclosure requirements around what measures have been taken to implement the policy.

A requirement to disclose results on board diversity (against target and compared to the prior year) in table form could be introduced. Currently, information on board diversity is only implied in the general information presented in annual reports with annual comparisons not being provided. It could be made more systematic.

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.

We agree. This information would help readers of reports and may encourage companies to consider diversity more when making nominations.

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 agree. Please see further suggestions relating to disclosure in #2 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.

With this measure, there is the risk of further restriction in the available INED talent pool.

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.

Please see #5 above.

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.

The main consideration is whether the INED is free of current interests in the company.

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.

We agree that this information provides important information with respect to the background of the relevant directors and, as such, would recommend that this be introduced as a CP (or even LR) to promote consistency of the information provided by issuers. In addition, we would expect this information to be relevant to all directors (rather than just the INEDs).

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.

We agree i.e. to be consistent with other definitions relating to relationships in the LRs.

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.

In general, we agree, but would suggest also including children that are over 18 years of age in the definition.

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 agree.

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.

We agree. This is important to general transparency and the protection of minority interests.

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.

For the reasons set out in the consultation paper, we believe that the corporate communication regime requires modernisation. We believe that the issuers should have the option (subject to the laws of their country of incorporation) to opt for electronic dissemination of their communications with implied consent. However, we recognise potential concerns regarding the impact of this on retail investors who may prefer to continue to receive hard-copies of these communications and therefore the ability to "opt in" to receiving hard-copies should be made as user-friendly as possible. For instance, an approach similar to the UK approach could be adopted whereby shareholders receive a once-off communication in hard-copy of the opt-in notice that can be easily completed and mailed back in a return envelope provided by the issuer. The Exchange could also make it a requirement that issuers clearly state on their websites whether they have adopted an electronic dissemination approach with contact details for shareholders to provide an opt-in notice at any time. The Exchange may also want to explore whether to take this further by allowing issuers to send the hard copy notifications only to those shareholders for which no e-mail details have been provided to the issuer.

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