



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

By email (response@hkex.com.hk) and by hand

13 December 2017

Our Ref.: C/CG, BH38521

Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Dear Sirs,

[Re. Consultation Paper on Review of the Corporate Governance Code and Related Listing Rules](#)

— Please find attached a submission from the Hong Kong Institute of Certified Public Accountants on the above consultation paper.

Should you have any questions on the submission, please do not hesitate to contact me at the Institute.

Yours faithfully,

Peter Tisman
Director, Advocacy & Practice Development

PMT/pk

Encl.

QUESTIONNAIRE ON CONSULTATION PAPER ON REVIEW OF THE CORPORATE GOVERNANCE CODE AND RELATED LISTING RULES

We invite interested parties to respond to the Consultation Paper on Review of the Corporate Governance Code and Related Listing Rules (**Consultation Paper**), downloadable from the HKEX website at:
<https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017111.pdf>.

This Questionnaire contains the Privacy Policy Statement; Part A: General Information of the Respondent; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEX both Part A and Part B of this Questionnaire no later than **8 December 2017** by one of the following methods:

By mail or
hand delivery to

Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

**Re: Consultation Paper on Review of the Corporate
Governance Code and Related Listing Rules**

By fax to

(852) 2524-0149

By e-mail to

response@hkex.com.hk

Please mark in the subject line:

“Re: Consultation Paper on CG Review”

Our submission enquiry number is (852) 2840-3844.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

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2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

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For one or more of the purposes specified above, the personal data may be:

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2. supplied to any agent, contractor or third party who provides administrative or other services to HKEX and/ or any of our affiliates in Hong Kong or elsewhere.

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Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEX should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEX’s administrative and actual costs incurred in complying with your data access requests.

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Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

Contact us

By Post:
Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12/F., One International Finance Centre
1 Harbour View Street
Central
Hong Kong

By Email:
pdpo@hkex.com.hk

Part A General Information of the Respondent

(1) Please state whether your response represents your personal or your company/entity's view by checking (☑) the boxes below and filling in the information as appropriate:

Company/Entity view

Company/Entity name*:	Hong Kong Institute of Certified Public Accountants		
Company/Entity type*:	<i>HKEX Participant</i> :- <input type="checkbox"/> SEHK <input type="checkbox"/> HKFE <input type="checkbox"/> HKSCC <input type="checkbox"/> SEOCH <input type="checkbox"/> HKCC <input type="checkbox"/> Listed company <input checked="" type="checkbox"/> Professional body / Industry association <input type="checkbox"/> Market practitioner (Type: _____) <input type="checkbox"/> None of the above		
Contact person*:	Mr	Peter Tisman	
Title:	Director, Advocacy and Practice Development		
Phone no.*:	22877084	Email address:	peter@hki CPA.org.hk

Personal view

Respondent's full name*:	Mr/Ms/Mrs
Phone no.*:	Email address:
Among the following, please select the one best describing your position*:	
<input type="checkbox"/> Listed company staff	<input type="checkbox"/> HKEX participant staff <input type="checkbox"/> Retail investor
<input type="checkbox"/> Institutional investor	<input type="checkbox"/> None of the above

Important note: All fields marked with an asterisk (*) are mandatory. HKEX may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.

(2) Disclosure of identity

HKEX may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should tick the box below:

I/We do not wish to disclose my/our identity to the members of the public.

Signature (with Company/Entity Chop if the response represents company/entity view)

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.

As indicated in the consultation paper, there are various references in the Corporate Governance Code ("Code") to ensuring that directors are able to devote sufficient time to their work on the board and committees. Code Principle A.1, for example, is important and consideration should be given to specifying that among the matters to be reviewed in any board evaluation is the time commitment that individual directors have been able to give to their work on the board/ committees. As regards the details of the consultation proposal, where an INED takes on too many directorships, this is a problem for all the companies he/she serves, not just the seventh. So the disclosure should be made by each company when that INED comes up for re-election, or better still, there should be an annual disclosure about INEDs' ability to devote time to the company. Some form of numeric benchmark is useful, but as to whether 7 is the right number for Hong Kong, it may be worthwhile to look at the statistics. There is a good deal of judgment involved in assessing the INEDs' ability to devote time to the company – e.g. 7 small company directorships may be easier to handle than 3 large multinationals; also if an INED has full-time employment, even one active directorship may be hard to manage. INEDs play a very important role in CG, and should not be rubber stamps. In practice, it is hard to envisage how an INED can provide a high quality contribution to more than 3 or 4 active listed companies. Consideration should be given, therefore, to adding a Recommended Best Practice ("RBP") at a lower threshold (e.g., a company should explain how an INED, especially one with full-time employment, is able to devote sufficient time to the board if he/she sits on, say, more than 3 boards).

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.

We find the proposed scope of this proposal somewhat ambiguous. The proposal is contained in the part of the consultation paper under the heading of "Independent Non-Executive Directors" and it is proposed also to amend Code Provision ("CP") 5.5, which relates to INEDs (paragraphs 13 and 36 refer; see also our response to Q3). However, the general requirement in CP 5.6 relates to all directors. We are also unclear why the issue of women on boards and Hong Kong's lagging performance is raised in paragraphs 45 and 46 of the consultation paper, as there is no specific recommendation on this. We take it that this proposal is intended to relate to directors generally, not only INEDs, and support it on that basis.

Some guidance should be given on what would constitute meaningful information as part of a diversity policy, to avoid the use generic, boilerplate statements. An RBP could be added in the Code to encourage companies to introduce some measurable objectives, which would add value to the proposed rule.

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, on the basis that a company's board diversity policy is not to be implemented solely in the context of the appointment of INEDs, but is an issue for consideration in the appointment of all directors. (See also our response to Q2.)

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

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.

Some further explanation may need to be provided as to why the cooling-off period should be increased from one year to three years, rather than, say, two years. We note that Australia and the UK have three-year cooling off periods for former professional advisers, on a "comply or explain" basis, while the Mainland and Singapore apply a one-year cooling off period, in the listing rules and on a "comply or explain" basis, respectively. Therefore, a two-year cooling-off period could be seen as a reasonable middle ground and a more progressive change and we would suggest this option for consideration.

We also consider that a distinction should be drawn between professional advisers that have provided continuing services to the company and those that have supplied a one-off service. A director, partner, principal or employee of a professional adviser that has provided a one-off service may be less likely to be in conflicting situation after a shorter 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.

See our response to Q5. Consideration should be given to increasing the existing cooling-off period to two years. By way of comparison, in relation to the Hong Kong Institute of CPAs' Professional Ethics in Liquidation and Insolvency, an insolvency practitioner is regarded as having a significant professional relationship and should not take up an insolvency appointment in relation to a company, where the practice for which he/she works, or an individual within the practice, has previously carried out audit-related work for the company within the previous two years.

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 cooling-off period for persons with material interests in a company's principal business activities should be aligned with those for former professional advisers and auditors. Material interests in the issuer's business activities are no less important than a prior professional relationship with the company as far as the question of independence is concerned.

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.

As this is an issue that could have a significant impact on independence, we are of the view that a "comply or explain" Code CP should be introduced, rather than an 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.

We question whether this should be limited to "immediate family members", as defined under Rule 14A.12(1)(a) or be extended to "family members", as defined under Rule 14A.12(2)(a). There does not seem to be a strong case for limiting the scope of this independence consideration in the way proposed and we consider that it would be more effective if extended to cover "family members".

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.

We query whether this is the right question to ask in the light of Q9. The question here should be whether to limit the scope of this independence consideration to "immediate family members" or to go beyond that. We would not suggest having a different definition of "immediate family members" from the definition contained elsewhere in the listing rules; rather, as indicated in our response to Q9, we would suggest extending this independence consideration to "family members", as defined under Rule 14A.12(2)(a).

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 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.

While the original intention may not have been to require all directors to attend general meetings, it would seem important that all directors should be encouraged to attend the company's AGMs. Paragraph 17 of the consultation paper states: "We propose to amend the CP to clarify that there is an expectation for non-executive directors ('NEDs') including INEDs to attend all general meetings but the absence of any directors at general meetings will not be considered a deviation from the relevant CP". However, the proposed deletion of the final sentence of CP A.6.7, removes all reference to NEDs attendance at general meetings, so it is not clear how that expectation will be conveyed. A stronger incentive than simply disclosure of the attendance statistics may be needed. We suggest that consideration be given to introducing an RBP that directors should endeavour to attend AGMs.

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.

We agree. We would also suggest that it be made clear that it is preferable for the meeting(s) to be held separately and independently of board meetings and not simply treated as an adjunct to board meetings.

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.

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.

The fact that the relatively small minority of listed companies that are incorporated in Hong Kong cannot give effect to this proposal, unless and until the Companies Ordinance is amended, should not be a compelling reason not to proceed with this suggestion, if there are convincing arguments to do so. However, the fact that several other jurisdictions, including the UK and Australia, do not permit implied consent, should give more pause for thought.

- End -