



SUMMARY

30% CLUB HONG KONG AND THE WOMEN'S FOUNDATION (TWF) SUBMISSION

HKEX CONSULTATION ON THE REVIEW OF THE CORPORATE GOVERNANCE CODE AND RELATED LISTING RULES (2021)

Below is a summary of 30% Club HK and TWF's separate proposals in reply to the Consultation Questions.

30% Club HK and TWF will indicate no comment to a number of questions in the Consultation that are not directly relevant to our mission or areas of focus. However, we encourage others to answer all questions in the Consultation based on your views.

In particular, we believe the following questions are the most important and we ask that you please answer them with our suggested answers:

CORPORATE GOVERNANCE:

A. CULTURE:

Question 1 – Introduce Culture

Answer: Unanswered

In addition, (add to 'give reasons for your views' section), **we urge HKEX to:**

- Culture is difficult if not impossible to set or measure and issuers will have difficulty with this proposal
- Rather, the Corporate Governance Code should place emphasis on conduct. Misconduct is indicative of a poor culture and is able to be measured
- The Code should require the board to establish a framework to help determine an issuer's purpose, principles and values together with a framework for behaviours or conduct that are aligned with these values to in practice set the "tone from the top". Such framework to include requirements for the Board to:
 - o Articulate and disclose its purpose, principles and values
 - o Establish and disclose a Code of Conduct to guide the behaviour of employees and directors and ensure the Board is informed of material breaches of the Code

Question 2:

(a) Introduce CP requiring establishment of anti-corruption policy

Answer: Yes

In addition (add to 'give reasons for your views' section), **we urge HKEX to:**

- Upgrade this CP to a Mandatory Disclosure Obligation and add a requirement that the policy be communicated, implemented, reviewed and measured for effectiveness. Otherwise it is of limited effect
- Add a requirement that material breaches of the policy be reported to the Board in order for the Board to address material issues and incidents quickly as well as assessing the effectiveness of the policy and make adjustments if required
- Add a requirement that the policy be reviewed on a regular basis and at least every 2 years

Question 2:

(b) Upgrade RBG to CP requiring establishment of whistleblowing policy

Answer: Yes

In addition (add to 'give reasons for your views' section), **we urge HKEX to:**

- Upgrade this to a Mandatory Disclosure Obligation and add a requirement that the policy be communicated, implemented, reviewed and measured for effectiveness. Otherwise it is of limited effect
- Add an obligation that the Audit Committee (or Committee comprising a majority of INEDs) to receive all complaints or concerns such that material issues and incidents can be quickly addressed as well as assessing the effectiveness of various policies and make adjustments if required
- Add an additional requirement for larger issuers to establish an independent whistleblowing process whereby complaints are independently reviewed/investigated and reported to the Audit Committee (or a Committee comprising a majority of INEDs)
- Add a requirement that the policy and system be reviewed on a regular basis and at least every 2 years

B. DIRECTOR'S INDEPENDENCE

Question 3: Introduce CP requiring disclosure of policy to ensure independent views and input are available to the Board

Answer: No

In addition (add to 'give reasons for your views' section), **we urge HKEX to:**

Independent views and input should be obtained from INEDs and we urge HKEX to continue to strengthen requirements in relation to INEDs including term limits rather than explore independent input and views from non-board members which risks diluting the role and importance of INEDs

Question 4:

(a) Re-election of Long Serving INEDs to require (i) independent shareholder approval; and (ii) Additional Disclosure

Answer: Yes

In addition, (add to 'give reasons for your views' section), **we urge HKEX to:**

- Introduce strict 9 year limits for INEDS and foreshadow this will be introduced within 3 years as independence is a key requirement to enhance corporate governance. Given the large number of Long Serving INEDS introducing stricter limits will enhance turnover and board refreshment which will aid board diversity and improve board quality.
- Introduce a requirement to appoint a Lead INED (who is not a Long Serving INED) as a CP in view of the significant presence of block shareholders in Hong Kong
- The responsibilities of the lead independent director should include but are not limited to:
 - o Presiding at all meetings of the board at which the chair is not present, including sessions of the independent directors;
 - o Calling meetings of the independent directors;
 - o Serve as principal liaison on board-wide issues between the independent directors and the chair;
 - o Approving the quality, quantity, appropriateness and timeliness of information sent to the board as well as approving meeting agenda items;
 - o Facilitating the board's approval of the number and frequency of board meetings, as well as meeting schedules to assure that there is sufficient time for discussion of all agenda items;
 - o Retain outside advisors and consultants who report directly to the board of directors on board-wide issues;
 - o Ensuring they be available, if requested by shareholders, when appropriate, for consultation and direct communication;
 - o They should agree to and document the split roles between a non-independent chair, the CEO and the lead independent director and have this published on the company's website so that shareholders can understand the break out of responsibilities.
- Introduce a CP that INEDs meet on their own at least twice per year
- It is important for the will of independent shareholders to be understood by listed companies when it comes to the election of directors. Many companies ignore the situation where a majority of independent shareholders do not support the re-election of NEDs (including INEDS) who become re-elected due to the significant voting power of the block shareholder.
- We believe the independent shareholder vote should be disclosed separately on the re-election of all NEDs and where there is not majority support for the re-election of NEDs that it be a CP that the issuer report back to the Exchange within 30 days of the meeting the Board's rationale for the continuation of that director in office.

Question 4:

(b) New CP requiring appointment of new INED at forthcoming AGM where all INEDs are Long Serving INEDs (and disclosing length of tenure etc.)

Answer: Yes

In addition (add to 'give reasons for your views' section), **we urge HKEX to:**

- Introduce strict 9 year limits for INEDs and foreshadow this will be introduced within 3 years as independence is a key requirement to enhance corporate governance. Given the large number of Long Serving INEDs introducing stricter limits will enhance turnover and board refreshment which will aid board diversity
- Introduce a requirement to appoint a Lead INED (who is not a Long Serving INED) as a CP in view of the significant presence of block shareholders in Hong Kong
- Introduce a CP that INEDs meet on their own at least twice per year
- Require board to outline a transition plan for Long Serving INEDs within 3 years

Question 5: Introduce RBP that issuers should not generally grant equity based remuneration with performance elements to INEDs as this may lead to bias in decision making and compromise objectivity and independence?

Answer: Yes

In addition (add to 'give reasons for your views' section), **we urge HKEX to:**

- Make this requirement a CP rather than a RBP

C. DIVERSITY

Question 6:

- (a) Proposal to highlight that diversity is not considered to be achieved by a single gender board?**

Answer: Yes

In addition (add to 'give reasons for your views' section), **we urge HKEX to:**

- Include the proposed statement in Rule 13.92 rather than in the notes to this rule
- Amend Rule 13.92 to require an issuer to have a diversity policy that is applicable across the issuer i.e. throughout the organisation (board, management, senior management and workforce generally) and not only in relation to the board (to align with proposal 6(b))
- Amend Rule 13.92 to require the board to set measurable objectives for achieving gender diversity in the composition of its board, management, senior management and workforce generally and give consideration to these requirements for other aspects of diversity including race
- **Implement our recommendations in 6 (b) along with the above changes otherwise there is a wholesale risk that issuers will only appoint one woman per board to meet the above requirement which is in effect "a quota of one" and appears tokenistic. We have serious concerns that as currently proposed the consequences will mean issuers will take a limited approach by appointing a single female board director**

- We talk about 30% diversity because evidence demonstrates that this is the required critical mass for groups to stop thinking about having a “minority” of women and instead think inclusively about the board as a whole, operating together regardless of gender. It helps erode homogeneity and ultimately promotes better governance. As such, we urge HKEX to set targets of 30% within six years with an interim of 25% by 2025 (See 6(b)) which will also bring Hong Kong into alignment with other key markets such as U.K, Europe, U.S and Australia
- Requirements on single gender boards should be effective from 2022 (or as soon as the new proposals are effective) as a transition period of 3 years is far too long given the breadth of female talent in Hong Kong
- If HKEX does introduce a transition period, we recommend a 1 year maximum and this must be included in Rule 13.92 or another regulation rather than a statement of intention only

(b) Proposal to introduce MDR requiring all issuers to set and disclose numerical targets and timelines for achieving gender diversity at both (a) board level; and (b) across the workforce (including senior management)

Answer: Yes

In addition (add to ‘give reasons for your views’ section), **we urge HKEX to:**

In view of the extremely low number of women on boards in Hong Kong and the lack of action on this issue despite the requirement for issuers to have a diversity policy and guidance from HKEX we urge HKEX to go further to advance gender diversity in Hong Kong by:

- Rather than requiring individual issuers to set their own targets, require issuers to achieve board gender diversity of at least 25% by 2025.
- Added Guidance that if 80% of all issuers fail to meet the above target by 2025 then HKEX will introduce mandatory quotas with penalties for issuers who fail to meet the above targets. Further, that in 2025 HKEX will raise the above target to 30% to be met by 2027
- Issuers diversity policy should be applicable across the issuer (board, management, senior management and workforce generally) and not only in relation to the board and applicable changes be made to Rule 13.92. Asking issuers to set targets and timelines for workforce gender diversity without a requirement for an associated policy applicable to the whole company will not aid issuers in reaching targets
- Require the issuer to set measurable objectives for implementing its diversity policy
- Requiring issuers in addition to the current proposals to disclose in relation to each reporting period: (1) the measurable objectives set for that period to achieve gender diversity; (2) the entity’s progress towards achieving those objectives; (3) the respective proportions of men and women on the board, in management and senior management positions and across the whole workforce

(c) New CP to requiring the board to review the implementation and effectiveness of the board diversity policy annually?

Answer: Yes

In addition (add to 'give reasons for your views' section), **we urge HKEX to:**

- Amend the proposal so that an issuer's diversity policy is applicable across the issuer (board, management, senior management and workforce generally) and not only in relation to the board (to align with proposals in 6(a) and 6(b))

(d) Proposal to amend the relevant forms to include director's gender information

Answer: Yes

In addition (add to 'give reasons for your views' section), **we urge HKEX to:**

- Ensure that gender information includes non-binary gender options
- Establish public database that includes analysis updated biannually to include: percentage of women on boards on HSI; percentage of women on boards across all issuers; percentage of women appointed to new IPO issuers and the number and percentage of women appointed to boards in the foregoing period in comparison to men
- Director's information should also include a summary of background and skill set in addition to gender

Question 7: Upgrade to a rule to establish a Nomination Committee chaired by INED and comprising a majority of INEDs

Answer: Yes

Question 8: Upgrade to a MDR to disclose shareholder communications policy and annual review of such policy to ensure its effectiveness

Answer: Yes or No comment

Question 9: Introduce a rule requiring disclosure of director's attendance in the poll results announcement

Answer: Yes or No comment

Question 10: Delete CP that requires issuers to appoint NEDs for a specific term

Answer: Yes or No comment

ESG

Question 11: Elaborate on linkage between CG and ESG

Answer: Yes

In addition (add to 'give reasons for your views' section), **we urge HKEX to:**

- In addition to the board being responsible for evaluating and determining the nature and extent of risk there should be a specific requirement for the board to disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks.

Question 12: Require ESG guide to be published at same time as Annual Report

Answer: Yes

Question 13: Any comments on the rearranged Code

Answer: No comments

Question 14: Any additional comments:

Include any additional comments. TWF will include additional aspects in relation to gender diversity

Question 15: Agreement to implementation dates:

- (a) **1 Jan 2022 except for Long Serving INEDs**

Answer: Yes

- (b) **For proposals on Long Serving INEDs commencing on 1 Jan 2023**

Answer: Yes