

Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited
8/F, Two Exchange Square
8 Connaught Place
Central, Hong Kong

18 June 2021

Dear Sir / Madam


Consultation Paper on Review of Corporate Governance Code and Related Listing Rules

On behalf of ACCA (the Association of Chartered Certified Accountants) Hong Kong, we would like to submit our response to the captioned consultation paper.

ACCA Hong Kong supports the enhancement of corporate governance standards among listed issuers in Hong Kong, in areas of corporate culture, director independence, diversity and inclusion, and Environmental, Social and Governance (ESG) disclosures and standards. These amendments to the Corporate Governance Code strengthen Hong Kong's corporate culture and ESG position in Asia.

Enclosed please find our detailed responses to the questions set out in the consultation paper. Should there be any questions, please do not hesitate to contact Jane Cheng, Head of ACCA Hong Kong, at [REDACTED].

Yours faithfully

A large black rectangular box redacting the signature of the Chairman.

Chairman
ACCA Hong Kong

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

Your Name: _____ Rachael Johnson, Head of Risk Management and Corporate Governance, Professional Insights, ACCA _____

Question 1

Do you agree with our proposal to introduce a code provision ("CP") requiring an issuer's board to set culture in alignment with issuer's purpose, value and strategy?

Yes ☒ X

No ☐ _____

Please give reasons for your views.

Please provide your views:

The ACCA strongly agrees with the proposal to require the Board to align culture with purpose, value and strategy because in our view this would help organizations achieve its objectives more efficiently and better address the needs of its stakeholders. We find that an organization's culture is directly related to its performance, so the hope is that this CP can encourage companies to think more long-term and thereby build a more sustainable future.

Question 2(a)

Do you agree with our proposal to introduce a CP requiring establishment of an anti-corruption policy?

Yes ☒ X

No ☐ _____

Please give reasons for your views.

Please provide your views:

With fraud, hacking and money laundering reportedly on the rise, it is crucial for organizations to create clear anti-corruption policies that all stakeholders know about and understand. It is essential that these policies are part of robust governance processes and controls to ensure stakeholders at all levels are conscious of the policy and why it exists. A healthy, successful culture is where everyone in the organization is involved in the conversations about risk.

Question 2(b)

Do you agree with our proposal to upgrade a Recommended Best Practice ("RBP") to CP requiring establishment of a whistleblowing policy?

Yes ☒

No ☐

Please give reasons for your views.

Please provide your views:

As stated above, we believe effective risk governance policies are crucial more than ever today given the fast-changing risk landscape and rapid digital transformation taking place. Ensuring companies create a whistleblowing policy that is well-communicated and enforced is a significant service not only to the company and its stakeholders but to society at large. It is important that companies make sure the policy does not deter people from reporting wrongdoings and that investigations are not closed without justified reasons. Regular assessments are required to ensure its effectiveness.

Question 3

Do you agree with our proposal to introduce a CP requiring disclosure of a policy to ensure independent views and input are available to the board, and an annual review of the implementation and effectiveness of such policy?

Yes ☒

No ☐

Please give reasons for your views.

Please provide your views:

Enhancing shareholder and stakeholder engagement is crucial for Boards if they are to fulfil their fiduciary duties of care effectively, so ACCA welcomes the requirement of a policy to ensure independent views and input are available to the Board. In addition, ACCA believes Board evaluations, whether done externally or internally as self-assessments, are very important governance structures that provide a layer of assurance, which is crucial in today's complex world. This CP could also encourage more thought diversity, which we believe is key to better decision making.

Question 4(a)

Do you agree with our proposal regarding re-election of an independent non-executive director serving more than nine years ("**Long Serving INEDs**") to revise an existing CP to require (i) independent shareholders' approval; and (ii) additional disclosure on the factors considered, the process and the board or nomination committee's discussion in arriving at the determination in the explanation on why such Long Serving INED is still independent and should be re-elected?

Yes ☒X

No ☐

Please give reasons for your views.

Please provide your views:

ACCA welcomes this proposal in that it increases the transparency of the Board's composition and ultimately encourages fresh blood and input, which are important as ever in ensuring the Board is governing effectively and staying on top of the company's changing needs. We have seen many organizations around the world with even best-practice governance structures in place conducting much-needed reviews of their succession planning to ensure that all stakeholders are represented and that each director fully meets the forward-looking requirements of the company's strategy and future position. There could be more detail about the independent shareholders' approval process.

Question 4(b)

Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new independent non-executive director ("**INED**") at the forthcoming annual general

meeting where all the INEDs on the board are Long Serving INEDs, and disclosing the length of tenure of the Long Serving INEDs on the board on a named basis in the shareholders' circular?

Yes ☒X

No ☐

Please give reasons for your views.

Please provide your views:

ACCA welcomes this requirement in the sense that it encourages a 'refresh' of Board member composition that leads to greater independence, diversity and quality. We also welcome the disclosure requirement since it increases transparency about the Board composition and gives shareholders and other stakeholders a better understanding of who the members are and where they are coming from. There could be more said on how issuers should address succession planning and ensure that Board member elections are staggered so that there is not a large turnover at a given time, for example. In addition, the requirement should encourage the Board to consider the added value of fresh independent input and diversity of thought. It also must get the issuer to consider what new expertise might be needed on the Board given the changing risks and opportunities companies are facing in 2021 and beyond.

Question 5

Do you agree with our proposal to introduce a new RBP that an issuer generally should not grant equity-based remuneration (e.g. share options or grants) with performance-related elements to INEDs as this may lead to bias in their decision-making and compromise their objectivity and independence?

Yes ☒X

No ☐

Please give reasons for your views.

Please provide your views:

This RBP should help to prevent conflicts of interest and ensure long-term objectivity, unbiased leadership and accountability, especially today when societal trust is at an all-time low. But the most important question is whether this proposal helps companies get the right INED with the necessary skills, ethics and expertise to help the issuer achieve its objectives and navigate it through these fast-changing, more complex times. In our view, that is what matters most.

Question 6(a)

Do you agree with our proposal to highlight that diversity is not considered to be achieved by a single gender board in the note of the Rule?

Yes ☒ X

No ☐

Please give reasons for your views.

Please provide your views:

Having one gender on the Board does not address the governance issue of diversity and inclusion or recognize the value of equal or greater gender representation.

Question 6(b)

Do you agree with our proposal to introduce a Mandatory Disclosure Requirement ("MDR") requiring all listed 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)?

Yes ☒ X

No ☐

Please give reasons for your views.

Please provide your views:

This is the way the world is moving towards since past experience and research shows that mandatory disclosures lead to change (without quotas) and that greater gender diversity correlates with enhanced performance. In addition, requiring MDRs across the workforce, and not only for the Board, will ultimately help companies make more progress in diversity and inclusion and as a result build a much healthier corporate culture (and indeed reputation) that leads to a more resilient and sustainable future. ACCA believes a 'progress report' approach would also benefit corporate culture in HKEX-listed companies, particularly in areas of equal pay and equal opportunities.

Question 6(c)

Do you agree with our proposal to introduce a CP requiring the board to review the implementation and effectiveness of its board diversity policy annually?

Yes ☒ X

No ☐

Please give reasons for your views.

Please provide your views:

The tone must be set from the top, so it is essential that Boards make this annual assessment to ensure they are effective and proactive at addressing and prioritizing all stakeholders needs. They can only do this if all stakeholders are represented at the Board level. This proposal also allows Boards to see how they can improve and enhance their diversity and inclusion policies, making the culture more equal and inclusive. This builds trust and ultimately provides greater transparency for shareholders and other stakeholders.

Question 6(d)

Do you agree with our proposal to amend the relevant forms to include directors' gender information?

Yes ☒ X

No ☐

Please provide your views:

This is another way to force progress, increase transparency of the identity of the directors and be more clear about the purpose of the Code.

Please give reasons for your views.

Question 7

Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a nomination committee chaired by an INED and comprising a majority of INEDs?

Yes ☒

No ☐

Please give reasons for your views.

Please provide your views:

This proposal helps underline all our views stated above about becoming more in line with international best-practice corporate governance. In our view, it also leads to better Board efficiency, effectiveness, overall quality and independence. It also can facilitate the appointment of the right directors that are needed to govern effectively in this new normal. This ultimately enhances corporate governance in Hong Kong, and attracts more business and investment. Nevertheless, we feel there could be more elaboration about the approval process of the appointments of INEDs in this proposal.

Question 8

Do you agree with our proposal to upgrade a CP to a MDR to require disclosure of the issuer's shareholders communication policy (which includes channels for shareholders to communicate their views on various matters affecting issuers, as well as steps taken to solicit and understand the views of shareholders and stakeholders) and annual review of such policy to ensure its effectiveness?

Yes ☒X

No ☐

Please give reasons for your views.

Please provide your views:

The pandemic proved how vital engagement and communications with shareholders and other stakeholders are to the Board's ability to govern effectively. The crisis has forever changed the way Boards engage with shareholders and stakeholders, so we feel it is important as ever to assess and strategize their communications policy. With an increased focus on risk, there should be clearer and more readily available channels for shareholders and stakeholders to ask questions or discuss concerns. Boards also need to assess the effectiveness of their communications policies regularly if they are to make the relevant changes needed to improve and enhance their levels of engagement, especially given the rapid digitalization. In addition, Boards should evaluate how their communications policies affect their ability to help the organization achieve its objectives.

Question 9

Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements?

Yes ☒X

No ☐

Please give reasons for your views.

Please provide your views:

ACCA believes this is fundamental to ensuring accountability and in line with international best practices.

Question 10

Do you agree with our proposal to delete the CP that requires issuers to appoint non-executive directors for a specific term?

Yes ☒X

No ☐

Please give reasons for your views.

Please provide your views:

In principle, the reasons for setting specific terms of NEDs will vary company to company given its line of business or the industry it operates in. ACCA believes companies should be more focused on making sure they appoint the 'right' NEDs, the ones that suit the company and its changing needs/strategic vision best. So, in our view, this proposal makes sense as long as directors are already subject to retirement by rotation and shareholders' approval for re-election.

Question 11

Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between corporate governance and environmental, social and governance ("ESG") in the introductory section; and (b) including ESG risks in the context of risk management under the Code?

Yes ☒X

No ☐

Please provide your views:

Describing the relationship between corporate governance and ESG in the introductory section to the Code is more in line and consistent with the internationally-accepted reporting frameworks. It also reflects a more effective corporate governance structure that should enable issuers to gain a better understanding of the material risks and opportunities pertinent to their business, including those ESG related issues. It also provides shareholders with a clearer picture of how the company is addressing emerging risks and the sustainability matters relevant to its business and stakeholders.

Please give reasons for your views.

Question 12

Do you agree with our proposal to amend the Rules and the ESG Guide to require publication of ESG reports at the same time as publication of annual reports?

Yes ☒X

No ☐

Please give reasons for your views.

Please provide your views:

This proposal is consistent with global best practices aligning the simultaneous publication of non-financial ESG information and financial information. The alignment of financial and non-financial reporting ultimately helps companies address their risk and sustainability issues better by leveraging a more complete set of year-end data to create more coherent, forward-looking strategies. It also gives investors and other stakeholders a more comprehensive and timely picture of the company's performance.

Question 13

Do you have any comments on how the re-arranged Code is drafted in the form set out in Appendices III and IV to the Consultation Paper and whether it will give rise to any ambiguities or unintended consequences?

Yes ☒X

No ☐

Please give reasons for your views.

Please provide your views:

ACCA believes more explanation about why the Exchange is re-organizing the Code in this way and what its goals and desired results are would be beneficial for issuers, shareholders and the Exchange itself.

Question 14

In addition to the topics mentioned in the Consultation Paper, do you have any comments regarding what to be included in the new guidance letter on corporate governance (i.e. CG GL) which may be helpful to issuers for achieving the Principles set out in the Code?

Yes ☒X

No ☐

Please provide your views:

ACCA's view is that it is important to continue aiming to keep MDRs, CPs and RBPs grouped together on one Corporate Governance Code, but also to provide as much as possible updated guidance on applying amendments and meeting new reporting requirements, particularly on how to adopt the TCFD Recommendations when disclosing climate change-related information. For the guidance letter, we recommend as much sector-centric guidance as possible on helping companies understand what issues are material to them and how they are to prepare more ESG-aware accounts, which is vital to ensuring efficient capital is allocated. More explanations and examples of how the Principles are aiming to be consistent with internationally-accepted frameworks around the world would also be extremely helpful for everyone involved to understand the purpose of the Principles set out in the Code.

Please give reasons for your views.

Question 15(a)

Do you agree with our proposed implementation dates for all proposals (except the proposals on Long Serving INED): the financial year commencing on or after 1 January 2022?

Yes ☒X

No ☐

Please give reasons for your views.

Please provide your views:

We believe this provides sufficient time to plan and prepare, given the benefits of the proposals.

Question 15(b)

Do you agree with our proposed implementation dates for proposals on Long Serving INED: the financial year commencing on or after 1 January 2023?

Yes ☒ X ☐

No ☐

Please give reasons for your views.

Please provide your views:

This also gives sufficient time to plan and prepare, but we would like to see more explanation or guidance on how companies can find and select the right INEDs for their particular business. Again, we feel that is most important.