



dear Sirs,

I am writing with my views on proposed changes to the Corporate Governance Code (CGC) and related listing rules regarding tenure of Independent Non-Executive Directors (INEDs), on which you have sought consultation.

I write as someone who has been an INED on (and off) the boards of several companies, some listed, some private, over the past 20+ years.

I focus on the proposal that an INED's tenure should be capped at 9 years - so that long-serving INEDs should no longer be considered independent.

My comments are as follows:

1. 'Independence' is a qualitative concept, not a quantitative concept which has a limited lifespan. Some directors do not have the quality of independence of thought from the date of their appointment, some will have that quality forever. The idea that after 9 years an independent director suddenly loses that quality is not tenable. Where is the evidence that suggests that this is the case? Surely there is none.
2. It seems clear that this proposed change is little more than playing 'follow my leader', but why Hong Kong, 27 years after the handover, still looks to the UK as its leader in this regard, is inappropriate, and fresh independent thinking is required.
3. Where is the evidence that there is even a problem as a result of INEDs serving longer, in that capacity, than 9 years? Unless a problem can be clearly identified and proven, there should be no change.
4. The related proposal that an INED, disqualified for losing independence after 9 years, can magically become a 'born again' independent after a two year hiatus is ludicrous. Playing around with such arbitrary time limits is not credible.
5. There are many corporate governance responsibilities falling upon INEDs - chairmanship and majority membership of various Board committees in particular - which would create practical difficulties, once one starts playing around with definition of who qualifies for these roles. There are not so many well-qualified INEDs that the CGC and listing rules should be cavalier as to who is deemed suitable to continue as such.
6. It should be up to shareholders to decide who they believe are suitable and valued INEDs; there is no justification for shareholder rights to be over-ruled by arbitrary bureaucratic diktat, without a compelling case demonstrating the need.

7. The case of Pacific Basin Shipping Ltd (2343) is illuminating. This listed company has no controlling shareholder, the shares are widely held. Over its 20 year listing, it has had 5 CEOs. The INEDs have represented a solid element of continuity. Organisations such as ISS have not been slow to recommend to shareholders how they should vote on elections for directors. Actual votes for re-election of long serving INEDs, published on the company's website, include the following:

2018 Alasdair Morrison (10 completed years as an INED) 99%

2019 Dan Bradshaw (13 years) 95%

2019 Robert Nicholson (15 years) 92%

2023 Irene Basili (9 years) 99.8%

It is obvious that the shareholders have decisively wanted to re-elect these individuals as directors, in their own interests and the interest of the company. Where can there be any justification for the CGC and listing rules deliberately denying the shareholders' will, by disqualifying such individuals from continuing as INEDs? Of course there is none.

AN ALTERNATIVE APPROACH?

Strong corporate governance demands a strong cadre of INEDs. This requirement is not fulfilled by terminating good INEDS after an arbitrary 9 years. A company's INED group does of course need refreshing from time to time and I have two suggestions for possible CGC changes to effect this:

1. Consideration might be given to a new requirement for a listed company, every 3 years, to appoint at least one new INED. This would ensure some refreshment of the INED group. It would involve no compulsory disqualification of long-serving INEDs, but in practice it might have an effect along these lines, but this would be a matter for the company's shareholders to decide.

2. Consideration might also be given to focusing on the group of INEDs as a whole, not on individuals. It is not difficult to conceive a powerful group of say 6 INEDs, comprising individuals with a wide range of tenure, individually of say 25 years, 18, 14, 10, 6 and 2; this would retain directors of experience, with considerable knowledge of the company and its operations, complemented by younger directors, less experienced but with fresher insights. Far better to have such a diverse group in terms of experience than to terminate the 4 most senior INEDs for breaching the arbitrary 9 years as the current proposals envisage.

Patrick B Paul