



18 June 2021

Our Ref.: C/CG, M130363

The Stock Exchange of Hong Kong Limited
8/F, Two Exchange Square,
8 Connaught Place, Central,
Hong Kong

Dear Sirs,

[Consultation Paper: Review of Corporate Governance Code and Related Listing Rules](#)

We sought views from members of the Organizing Committee for the Hong Kong Institute of CPAs' Best Corporate Governance & ESG Awards, among others, on the above consultation paper. Our responses to the specific proposals are contained in the Appendix.

We support the general direction of the proposals and most of the specific measures put forward in the consultation paper. We also welcome the improvements in clarity that the changes will bring about. As regards the latter, the introduction of a statement linking the Corporate Governance Code ("CGC") and the Environmental, Social and Governance ("ESG") Reporting Guide is a good first step. Over time, we would hope that issuers will be encouraged to more fully integrate the governance of ESG matters into their overall corporate governance. The clear and strong statements about the meaning of "comply or explain" and that, if an issuer deviates from a CGC Provision without providing considered reasons and explanations, this will constitute a breach of the listing rules, also provide some welcome clarity. Similarly, we appreciate the efforts to make clear that recommended best practices are more than just "take it or leave it" suggestions, but also convey expectations in terms of facilitating issuers' compliance with the Principles. We have, meanwhile, suggested one or two further refinements in the wording of these statements.

Whilst not proposed in the consultation paper, in our view, evaluations of the board performance could be considered for upgrading from the current recommended best practice to a CGC Provision, as regular board evaluations can help to underpin various other matters covered in the consultation paper, and to reassure stakeholders that the board is committed to continuous improvement in its performance. Based on our observations, evaluations are not implemented widely among issuers and, even where they are conducted, the information provided often lacks sufficient detail to be of substantial value to shareholders.

Should you have any questions on this submission, please feel free to contact me at the Institute on 2287 7084 or at peter@hkicpa.org.hk.

Yours faithfully,

Peter Tisman
Director, Advocacy & Practice Development

PMT/WW/pk
Encl.

Response to HKEX Consultation Paper: Review Of The Corporate Governance Code And Related Listing Rules

<p>Question 1</p> <p>Do you agree with our proposal to introduce a CP requiring an issuer's board to set culture in alignment with the issuer's purpose, value and strategy?</p>	<ul style="list-style-type: none"> - <u>We agree</u>. However, because the concept of “corporate culture” is an abstract concept and not easy to pin down, clear guidance needs to be provided by HKEX as to its expectations. For many companies, the concept of a company’s “purpose”, beyond generating a return for shareholders, may also not be readily understood. This requires further explanation, including how it relates to terms and concepts that may be more familiar, such as “vision”, “mission” and “values”. - As regards culture, the broad definition given in the UK Financial Reporting Council report, “Corporate Culture and the Role of Board” (July 2016) seems apt and a good starting point, i.e.: <i>Corporate culture “can be defined as a combination of the values, attitudes and behaviours manifested by a company in its operations and relations with its stakeholders” (Executive Summary, FRC report)</i> - We note that some key elements are provided in paragraphs 53 and 54 of the consultation paper. Something similar could be incorporated in the Corporate Governance Code (“CGC”). We suggest that the above comments, including those regarding a definition of “culture” and further explanation of “purpose”, be taken into account under Principle A.1 and the related Code Provisions (“CPs”). As it stands, the proposed wording of this section of the CGC may not be sufficiently clear. An example could be: “A.1 Corporate strategy, business model and culture Principle An issuer should be headed by an effective board which should assume responsibility for its leadership and control and be collectively responsible for promoting its success by directing and supervising its affairs and establishing its culture. Directors should take decisions objectively in the best interests of the issuer. Note: <i>“Culture” can be defined as the values, attitudes and behaviours demonstrated by a company in its operations and relations with its stakeholders</i>
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	<p>Code Provisions</p> <p>A.1.1 The board should determine the issuer’s purpose (i.e., the fundamental reason for its existence, aims and objectives), value and strategy, and satisfy itself that these and the issuer’s culture are aligned. All directors must act with integrity, lead by example, and promote the desired culture. Such culture should instil and continually reinforce across the organisation a belief in acting lawfully, ethically and responsibly.”</p> <ul style="list-style-type: none"> - To ensure that the culture, i.e. doing the right things, is incorporated in the organisational structure, a company should be required to measure it annually, to identify potential issues and any corresponding mitigating measures. The measurement could be done, e.g., through conducting surveys among employees of the company. - A corporation’s future can be better safeguarded when its board approaches culture proactively rather than reactively. A weak corporate culture and bad employee conduct create the perfect storm for overall poor performance and potential crises. - A study from Harvard Business Review indicates that a healthy corporate culture increases productivity and generates positive long-term shareholder value.
<p>Question 2</p> <p>Do you agree with our proposal to:</p> <p>(a) introduce a CP requiring establishment of an anti-corruption policy; and</p> <p>(b) upgrade a RBP to CP requiring establishment of a whistleblowing policy</p>	<p>Q2a:</p> <ul style="list-style-type: none"> - <u>We agree</u>. From a legal and compliance perspective, we trust that listed issuers should already have anti-corruption policies in place for the compliance of all staff members, senior management and board members. It should not be difficult for issuers to explain the policy in their annual reports or on their websites. However this begs the question as to why focus only on anti-corruption and not also include other important policies from the point of view of ethics and culture, such as an anti-money laundering policy. <p>Q2b:</p> <ul style="list-style-type: none"> - <u>We agree</u>. The Association of Certified Fraud Examiners’ global study on occupational fraud and abuse, “Report to the Nations” (2020), suggests that over 43% of cases are reported via tips; furthermore, when companies have hotlines, more than half of these cases are uncovered through this channel.

	<ul style="list-style-type: none"> - It should be made clear that an issuer’s whistleblowing policy should include protection for whistleblowers that act in good faith against any form of retaliation, such as suspension, dismissal, withholding promotion, demotion, reduction of wages, change of duties and working hours, etc. This is an important element of a whistleblowing policy and it should form part of an issuer’s expected disclosure in relation to the scope of the policy. - Ultimately, to make the policy more effective, it should be backed by a comprehensive statutory regime to give potential whistleblowers the confidence to come forward. There is currently no single comprehensive law to protect whistleblowers in Hong Kong. The UK, for example, has had a law in place for over two decades. The Public Interest Disclosure Act of 1998 has been used by several countries as a model for such a law.
<p>Question 3</p> <p>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?</p>	<ul style="list-style-type: none"> - <u>We agree.</u> As mentioned in the consultation paper, a number of listing rules have been enhanced to safeguard the independence of independent non-executive directors (“INEDs”). Therefore, issuers should already have an appropriate policy in place, in order to comply with the relevant rules and regulations. They just need to consolidate different rules and practices into their policy. However efforts should be made to ensure that issuers do not make boilerplate disclosures, which, in effect, simply point to the involvement of INEDs as sufficient evidence of independence on the board, and to regular reviews of INEDs’ independence; little would be gained from this. HKEX may need to issue guidance on the kind of factors that should be disclosed. - It would not be sufficient just to indicate that an annual review has been conducted, without any further elaboration. We suggest that issuers should be required to disclose details about how they conducted the review and what action they have taken to address any issues identified.
<p>Question 4a</p> <p>Do you agree with our proposal regarding re-election of Long Serving INEDs to revise an existing CP to require (i) independent shareholders’</p>	<ul style="list-style-type: none"> - <u>We agree.</u> The amendment is reasonable as the independence of a director may be compromised if he/she has served on a board for a long period of time. The proposal appears to be consistent with the view adopted by the Hong Kong Monetary Authority in relation to Long Serving INEDs on the boards of authorised institutions. - The approval from independent shareholders will help to ensure the suitability of INEDs, while the additional disclosures provided by issuers should enhance the underlying transparency and accountability in relation to the justification for considering the reappointment of Long Serving INEDs.

<p>approval; and (ii) Additional Disclosure?</p>	<ul style="list-style-type: none"> - It needs to be clarified whether a simple majority by independent shareholders would be deemed sufficient to pass the reappointment and whether only the votes of the shareholders present in person or through their representatives attending the meeting will be counted. At the same time issuers should be encouraged to provide for e-voting and hybrid meetings.
<p>Question 4b</p> <p>Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new INED at the forthcoming AGM 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?</p>	<ul style="list-style-type: none"> - <u>We have reservations about this proposal.</u> - It is sensible to disclose length of tenure of the Long Serving INEDs on the board on a named basis in the shareholders' circular, as sufficient information should be given to independent shareholders to enable them to make an informed decision. - However, given the proposal for an independent shareholders' vote, it seems somewhat out of step with this to introduce, at the same time, a CP to require the appointment of new INED at the next AGM where all the INEDs are Long Serving INEDs. It would be more logical to see how the new system operates first and whether the requirement for a vote already leads to a change. That said, the proposed appointment of a new INED where all the existing INEDs are long serving could be included as a Recommended Best Practice ("RBP"), or in guidance, to send a message to issuers about expectations.
<p>Question 5</p> <p>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?</p>	<ul style="list-style-type: none"> - <u>We agree.</u> Non-executive directors play a vital role in the oversight and control of a company's activities and can provide expert guidance on specific matters. It is essential that the remuneration of INEDs is not structured in a way that compromises this vital role by, e.g., linking their remuneration to the company's financial performance. Nevertheless, INEDs should be adequately remunerated for the time and effort that they have to commit in order to discharge their responsibilities. - We note the position taken in guidance issued by the International Corporate Governance Network ("ICGN"), which is as follows: <i>"For companies in the early stage of their life cycle where financial stability is yet to be established, it is appreciated that the award of cash fees may be problematic. Part or all of this award may be granted in the form of nil-cost or fully paid non-performance-based shares. This may be a viable alternative when seeking to attract and retain individuals that possess the desired qualities."</i>

	<p><i>Cash fees are considered the most suitable form of remuneration but it is also understood that a mixture of cash and shares may be desirable.</i></p> <p><i>The use of share options or any form of performance-based remuneration for non-executive directors or chairs should be discouraged. Performance-based remuneration has significant potential to conflict with a non-executive director's primary role as an independent representative of shareholders." (ICGN, Guidance on Non-executive Remuneration, 2016.)</i></p> <ul style="list-style-type: none"> - The practice of providing board members with equity grants is uncommon in Asian markets. We understand that only around 10% of Hong Kong companies do so. Therefore, the proposal should not have a significant impact on existing issuers.
<p>Question 6(a)</p> <p>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?</p>	<ul style="list-style-type: none"> - <u>We have reservations about this proposal.</u> - While we support the objective of achieving greater gender diversity, we have some reservations about the proposed means of achieving it. It may be better to say in the proposed note to the relevant listing rule that diversity <u>is unlikely to be achieved</u> by a single gender board. There are many factors in diversity and, in principle, a single gender board could still achieve a number of them, e.g., diversity in age, background, ethnicity. Generally speaking, an issuer should aim to have a mixed gender board and we applaud efforts to improve gender diversity, which is not particularly good in Hong Kong and has hardly progressed in recent years. However, we would also caution against the setting of overly rigid targets, and would draw attention to the fact that attitudes in society towards gender are themselves becoming less rigid and it may be necessary to elaborate on what constitutes not having a single gender board. For example, would an issuer be regarded as meeting the requirement of not having a single gender board were it to have an all-male (or all-female) board with the exception of one transgender person? - An issuer with a single gender board could instead be required to explain how this meets the objective of diversity and, in addition, there could also be an RBP or guidance stating that, as a rule of thumb, boards would be expected to have a minimum number or certain proportion of members who are a different gender from the predominant gender on the board. - We would refer you to the proposals in the United States, which would appear to be more nuanced. NASDAQ, together with the Securities and Exchange Commission, is in the progress of finalising a proposal to institute a comply-or-explain board diversity objective for listed companies to have at least two "diverse" directors, including one who self-identifies as female and one who self-identifies as either an

	<p>underrepresented minority or LGBTQ+. (Source: Mayer Brown article, 21 April, 2021. See also: https://www.nasdaq.com/board-diversity)</p> <ul style="list-style-type: none"> - In the United Kingdom, the Financial Conduct Authority is currently working with the Prudential Regulation Authority on a joint approach to diversity and inclusion for financial services firms, as well as considering whether to implement diversity requirements as part of its premium listing rules. - While issuers may argue that their priority is to appoint the best person regardless of gender, the statistics suggest that this is not necessarily happening when it comes to actual board appointment processes. For example, in Hong Kong, of the 1,529 director positions, 180 were filled by women, representing only 11.77%, according to a study conducted by the Hong Kong Institute of Directors in 2020. Intuitively, it seems quite unlikely that a male board member is the best option almost nine times out of ten. - Studies indicate that having a more gender diverse board is good for business (see, e.g., an article published by the Harvard T.H. Chan School of Public Health on this topic) - While gender diversity should be enhanced, other components should not be neglected in order to strengthen the composition of the board. At the end of day, the optimal board composition should be more than gender diverse, and requires thinking broadly about the skills and experiences that are critical to the success of a company, including technical, commercial, strategic, operational leadership, and/or international experience.
<p>Question 6(b)</p> <p>Do you agree with our proposal to introduce a 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)?</p>	<ul style="list-style-type: none"> - <u>We have reservations about this proposal.</u> - We support the objective of achieving greater gender diversity, but have doubts about requiring the setting of rigid numerical targets in relation the board and would prefer to see to more nuanced approach, as indicated above. - Trying to achieve gender diversity within a predominantly single gender workforce may be less straightforward and some guidance may need to be provided as to HKEX's expectations. We would hope that flexibility would be allowed. Some occupations remain quite segregated by gender; for instance, the professions of registered nurses and beauticians are generally dominated by women, while mining is a male-dominated sector. It may not be practical to require all issuers to target a fixed percentage of male and female staff in their general workforce. The relevant legal, regulatory and cultural/ societal context may also

	<p>need to be taken into account, given, particularly, that the workforces of many issuers listed in Hong Kong will be based primarily outside Hong Kong.</p> <ul style="list-style-type: none"> - The proposal may however be easier to implement in the senior management, as the number of staff involved would be much smaller and this may be more within an issuer’s control. However, as the main source of senior management would often be through promotions from more junior ranks, the pool of eligible staff from the minority gender in the workforce would tend to be substantially less. Nevertheless setting targets for senior management may be a better starting point as it could encourage issuers to engage more junior staff of the minority gender over time. - The proposed MDR related to the workforce (excluding the senior management) could instead be introduced, initially, on a “comply or explain” basis (e.g., a CP on disclosure) giving more flexibility to issuers. This may be upgraded to an MDR in a few years’ time, after reviewing the relevant statistics and observing any challenges/ difficulties faced by issuers. - If, ultimately, numerical targets and timelines are set, they should be accompanied by proper explanations. For instance, if an issuer proposes to set a gender diversity target of 15% of board members, and the same percentage of senior management by 2025, further information should be provided as to why these targets have been selected, what will be done to achieve them (e.g., interim milestones) and what additional measures will be put forward if the (interim) targets are not being met.
<p>Question 6(c)</p> <p>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?</p>	<ul style="list-style-type: none"> - <u>We agree.</u> Details should be disclosed as to how the review has been conducted (e.g., whether the review forms part of the board evaluation process), any significant issues identified and mitigating measures, etc. Merely indicating that a review has been conducted, without any further substance, would not add much value.
<p>Question 6 (d)</p> <p>Do you agree with our proposal to amend the</p>	<ul style="list-style-type: none"> - <u>We agree.</u> The amendments to the relevant forms would in line with the overall direction toward greater board diversity.

<p>relevant forms to include directors' gender information?</p>																									
<p>Question 7</p> <p>Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a NC chaired by an INED and comprising a majority of INEDs?</p>	<p>- <u>We agree.</u> HKEX's latest review of issuers' CG practices, published in late 2020, focused on disclosures in the CG reports of 400 randomly selected issuers, for the financial year ended on 31 December 2019; the compliance rate of the five least complied with CPs are extracted below for ease of reference.</p> <p>61. Chart 4 below sets out the compliance rate of the Five Least Complied CPs in the 2019 Review, the 2017/2018 Review and the 2016 Review.</p> <p style="text-align: center;">Chart 4: Compliance rate of the Five Least Complied CPs¹⁹</p> <table border="1"> <thead> <tr> <th>CP</th> <th>2019 Review</th> <th>2017/2018 Review</th> <th>2016 Review</th> </tr> </thead> <tbody> <tr> <td>Separation of the roles of chairman and chief executive (A.2.1)</td> <td>64%</td> <td>64%</td> <td>63%</td> </tr> <tr> <td>Attendance of AGM by chairmen of the board and board committees (E.1.2)</td> <td>91%</td> <td>90%</td> <td>86%</td> </tr> <tr> <td>NEDs being appointed for a specific term, subject to re-election (A.4.1)</td> <td>92%</td> <td>85%</td> <td>88%</td> </tr> <tr> <td>Disclosure of dividend policy (E.1.5)</td> <td>94%</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td>Establishment of a NC comprising a majority of INEDs (A.5.1)</td> <td>95%</td> <td>95%</td> <td>95%</td> </tr> </tbody> </table>	CP	2019 Review	2017/2018 Review	2016 Review	Separation of the roles of chairman and chief executive (A.2.1)	64%	64%	63%	Attendance of AGM by chairmen of the board and board committees (E.1.2)	91%	90%	86%	NEDs being appointed for a specific term, subject to re-election (A.4.1)	92%	85%	88%	Disclosure of dividend policy (E.1.5)	94%	N/A	N/A	Establishment of a NC comprising a majority of INEDs (A.5.1)	95%	95%	95%
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	<ul style="list-style-type: none"> - The findings of the 2020 review indicate that 95% of issuers are already complying with CP A.5.1 on establishing a nomination committee with a majority of members who are INEDs. It seems that this figure has been the same for the past five years. Therefore, it should not be difficult for all issuers to fall into line. - In the past three reviews of issuers' CG practices, the least-complied-with CP is that relating to the separation of the roles of chairman and chief executive. That figure has been fairly static, at around 63%-64%, i.e., less than two thirds. Under the circumstances, addressing this issue would seem to be an even more pressing matter.
<p>Question 8</p> <p>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?</p>	<ul style="list-style-type: none"> - <u>We agree.</u> Boards should engage not only with shareholders but also other stakeholders, such as employees, customers, suppliers and community stakeholders. This is particularly important in relation to, e.g., conducting a materiality assessment for ESG reporting purposes. Therefore, it may be more appropriate to refer to a "stakeholder communication policy" or a "shareholder and stakeholder communication policy". - Other than the policy itself, additional useful information would include disclosing how stakeholders have been engaged, the frequency, what concerns they have raised, and how these have been or will be dealt with. - An annual review should be conducted, as well as details as to how the review has been conducted, any material issues identified, and how these issues have been or will be addressed.
<p>Question 9</p> <p>Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in</p>	<ul style="list-style-type: none"> - <u>We agree.</u> The proposal will enhance transparency and provide additional relevant information to shareholders and other stakeholders.

<p>the poll results announcements?</p>	
<p>Question 10</p> <p>Do you agree with our proposal to delete the CP that requires issuers to appoint NEDs for a specific term?</p>	<ul style="list-style-type: none"> - <u>We agree</u>. The CP should be removed for the sake of improving clarity.
<p>Question 11</p> <p>Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between CG and ESG in the introductory section; and (b) including ESG risks in the context of risk management under the Code?</p>	<ul style="list-style-type: none"> - <u>We agree</u>. We would suggest the following minor changes to the proposed statement of linkage: <ul style="list-style-type: none"> <i>“Corporate governance provides the framework within which the board forms their decisions and build their businesses. The entire board should be focusing on creating long-term sustainable growth for shareholders and delivering long-term value to all stakeholders. An effective corporate governance structure allows issuers to have a better understanding of, and to evaluate and manage, risks and opportunities (including environmental and social risks and opportunities). The ESG Reporting Guide set out in Appendix 27 to the Exchange Listing Rules provides a framework for issuers to, among other things, identify and consider what environmental risks and social risks may be material to them. The board should be responsible for <u>effective governance of ESG matters to ensure and oversight of ESG matters, as well as assessment and management of material environmental and social risks. Issuers are required to disclose environmental and social matters in ESG reports in accordance with the ESG Reporting Guide</u>”</i> - Clarifying the linkage between CG and ESG is important, given that the “G” in both CG and ESG are connected, both covering a number of important overlapping facets under governance, including the governance framework, board operation and functioning, risk management and internal control. Ultimately, CG and ESG need to be part of an integrated framework of strategies, operations and reporting. In order to be sustainable in the long-term, an issuer cannot ignore one or the other and cannot continue to deal with them in separate in silos. - Nowadays, for example, managing ESG risks is not fundamentally different from managing any other risks that an issuer may face. A company that ignores ESG risks can face equally catastrophic consequences in terms of loss of reputation and financial damages. Some widely-reported examples include:

	<ul style="list-style-type: none"> • Fukushima nuclear power disaster station 2011 (Tokyo Electric Power Company) • BP Deepwater Horizon oil spill in Gulf of Mexico, April 2010 • Volkswagen emissions scandal 2015
<p>Question 12</p> <p>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?</p>	<ul style="list-style-type: none"> - <u>We have reservations about this proposal.</u> - Issuers used to publish their separate ESG/ sustainability reports, if any, up to three months after publishing their annual reports. - This timeline has been shortened to within five months after the financial year-end, in accordance with the conclusions of the previous consultation on the ESG Reporting Guide, published on 18 December 2019. This became effective for issuers' financial years commencing on or after 1 July 2020. For example, issuers with their financial year commencing from 1 January 2021 will need to publish their sustainability reports, if any, by 30 May 2022. - We note that the current proposal recommends aligning the publication timeframe of annual and ESG/ sustainability reports, to be effective for issuers' financial years commencing on or after 1 January 2022; so, issuers with their financial year starting on 1 January 2022 will need to publish their ESG/ sustainability reports, if any, by 30 April 2023. - We support the objective of aligning the publication timelines of issuers' annual and ESG/ sustainability reports, but question whether this should be done so soon after the previous change and before the results of that have been reviewed. As issuers have different levels of resources and competence in relation to ESG/ sustainability reporting, we suggest that consideration be given to deferring the effective date of alignment to financial years commencing on or after 1 July 2022 or 1 January 2023; issuers with smaller market capitalisation, in particular, may need more lead time. We would have some concern that, by introducing this requirement for financial years commencing on or after 1 January 2022, the outcome could be that some issuers choose to delay the publication of their annual report until closer to the end of the period allowed, in order to give themselves more time to prepare their ESG/ sustainability report. This would not be in the best interests of shareholders.

<p>Question 13</p> <p>Do you have any comments on how the re-arranged Code is drafted in the form set out in Appendices III and IV to this paper and whether it will give rise to any ambiguities or unintended consequences?</p>	<ul style="list-style-type: none"> - We would suggest some minor changes to the proposed wording of Part 2 of the Introduction, as follows: - <i>The Principles set the overarching direction to achieving good corporate governance. The code provisions are aimed to help issuers apply the Principles. The Exchange does not envisage a “one size fits all” approach, and appreciates that effective application of the Principles may be achieved by means other than strict compliance with the code provisions depending on a range of factors, including the issuer’s own individual circumstances, the size and complexity of its operations and the nature of the risks and challenges it faces. Issuers are expected to comply with, but may <u>still</u> choose to deviate from, the code provisions in order to <u>achieving</u> the spirit of the Principles, <u>subject to their providing adequate justification, as indicated below.</u></i> - <i>The recommended best practices are for guidance only. The voluntary nature of the recommended best practices does not mean that they are not important, but rather, they are practices which should be adhered to given consideration in order to support <u>an</u> issuer’s application of the Principles. Issuers are encouraged to state whether they have complied with the recommended best practices and give considered reasons for any deviation.</i> - We appreciate that a number of our previous recommendations made during and subsequent to the soft consultation exercise in July 2020 appear to have been considered by HKEX. We add below a couple of further observations which you may wish to consider: - Should the MDR under Section B(g) also refer back to the CP B.2.3, to cover the situation where the directors who have served their boards more than nine years are reappointed, without having relevant additional procedures in place like independent shareholder approval? - Attendance at general meetings <p>CP F.2.3 requires that: <i>“An issuer’s management should ensure the external auditor attend [sic] the annual general meeting to answer questions about the conduct of the audit, the preparation and content of the auditor’s report, the accounting policies and auditor independence “</i></p> <p>Meanwhile, on attendance of directors at board and general meetings, Note 1 to MDR B. (1) states that <i>“attendance by a director at a meeting by electronic means ...may be counted as physical attendance,”</i> subject to the issuer’s constitutive documents and the law and regulations of its place of incorporation. No</p>
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	similar dispensation is given to auditors to attend AGMs electronically, despite the Covid-19 pandemic. This should be rectified.
<p>Question 14</p> <p>In addition to the topics mentioned in this paper, do you have any comments regarding what to be included in the CG GL which may be helpful to issuers for achieving the Principles set out in the Code?</p>	<ul style="list-style-type: none"> - We have indicated in our responses to the various questions above, some additional areas where guidance may be needed or would be desirable. In addition, it could be helpful if the CG GL were to include or make reference to practical examples of good practices and disclosure.
<p>Question 15</p> <p>Do you agree with our proposed implementation dates of: (a) for all proposals (except the proposals on Long Serving INED): financial year commencing on or after 1 January 2022; and (b) for proposals on Long Serving INED: financial year commencing on or after 1 January 2023?</p>	<p>Q15a:</p> <ul style="list-style-type: none"> - As indicated under Q12, consideration should be given to deferring the effective date to financial years commencing on or after 1 July 2022 or 1 January 2023. <p>Q15b:</p> <ul style="list-style-type: none"> - If, as suggested above (see the response to Q4(b)), it is made an RBP rather than CP to appoint a new INED at the next AGM where all the existing INEDs are Long Serving INEDs, it should be acceptable to make the effective date financial years commencing on or after 1 January 2022.