



Submission to the HKEX Consultation Paper on Review of Corporate Governance Code and Related Listing Rules

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Introduction

This submission responds to the questions raised by the Consultation Paper issued by the Hong Kong Exchanges and Clearing Limited on Review of Corporate Governance Code and Related Listing Rules in June 2024 (the “**Consultation Paper**”).

Unless stated otherwise, terms used in this submission are the same as those terms as defined in the Consultation Paper.

Consultation Questions

1. *Do you agree with our proposal to introduce a new CP requiring issuers without an independent board chair to designate one INED (Independent Non-Executive Director) as a Lead INED to enhance engagement with investors and shareholders? Please provide reasons for your views.*

We agree that appointing a designated Lead INED is a beneficial proposal. It enhances communication among INEDs, between the INEDs and the board, and with shareholders addressing investor concerns about lack of access to the board.

However, the Lead INED should not be required to take on additional liability or responsibility compared to the other INEDs. Nevertheless, there should be extra requirements to become a Lead INED, e.g. 3 years industry experience, previous INED experience, ED/NED at listed companies etc.

The proposal's alignment with international best practices including the United States, United Kingdom, Singapore, and Australia demonstrates its validity and necessity in today's global business environment. Countries that have adopted similar practices early have seen positive impacts on corporate governance, leading to enhanced investor confidence and better governance outcomes.

This is readily apparent with the United States, who was widely regarded as the first country to systematically introduce and formalise the role of a Lead Independent Director. By adopting a Lead INED, issuers can align themselves with international best practices and potentially attract more global investment.

2. Regarding continuous professional development for directors, do you agree with our proposals to:
- a) Make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours?
 - b) Require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment?
 - c) Define “First-time Directors” to mean directors who (i) are appointed as a director of an issuer listed on the Exchange for the first time; or (ii) have not served as a director of an issuer listed on the Exchange for a period of three years or more prior to their appointment?
 - d) Specify the specific topics that must be covered under the continuous professional development requirement? Please provide reasons for your views.

- (a) As indicated by the Exchange, disciplinary cases often arise due to the directors’ lack of understanding of their duties and responsibilities and relevant Listing Rule requirements.

Therefore, we disagree with the proposition of not specifying a minimum number of training hours since continuous professional development can help registered personnel including all existing directors to reflect, review and document their learning.

Additionally, there may be a proportion of directors not trained to the standard required, further highlighting the importance of continuous professional development. At the same time, they can develop and update their professional knowledge and skills. In our opinion, without specifying a minimum number of training hours, there may be inconsistencies in the extent and quality of training the directors might receive.

- (b) We believe it would be more effective if the training hours were allocated with 12 hours in the first year and 12 hours in the second year. We believe the original proposed arrangement may not be that effective as some first-time directors may solely attend training in year 2 for compliance.

- (c) In general, we agree with the definition as this ensures all new or returning directors will receive comprehensive onboarding, stay updated with the knowledge and skills, be aligned with the latest regulations, and apply uniform standards across all practices.

As with our opinion in part (a), continuous professional development is crucial for all directors. In particular, for directors who have been away from the Exchange, this definition would provide them with the opportunity to refresh on the current practices and regulations. We also suggest that extra requirements to become first-time directors be necessary, e.g. 3 years industry experience, director of an issuer not listed on the Exchange etc.

- (d) In our opinion, the specific topics that should be covered under continuous professional development (**CPD**) requirements can include the following topics:

a) Regulatory and Compliance Updates

The financial industry is highly regulated, and keeping up to date with the latest rules, regulations, and compliance requirements is crucial for ensuring legal and ethical operations. Ensuring professionals comply with current laws, e.g. Securities and Futures Commission (SFC) and other regulatory bodies, reduces the risk of legal penalties.

b) Corporate Governance Updates

Good corporate governance practices are fundamental for maintaining investor confidence and ensuring the long-term success of companies.

This includes understanding the roles and responsibilities of directors and management, as well as best practices in transparency and accountability. Keeping professionals informed about the current corporate governance updates could help them compliant with the current regulations.

c) Risk Management

Effective risk management is key to safeguarding investments and ensuring financial stability. Training in this area could help professionals identify, assess, and mitigate various types of risks, including market,

credit, and operational risks, protecting professionals from potential losses and helping to develop robust risk mitigation strategies.

d) Ethics and Professional Conduct

High ethical standards and professional conduct are critical in maintaining trust and integrity in the financial markets. CPD in this area ensures that professionals adhere to ethical guidelines and promote a culture of honesty and fairness.

e) Financial Reporting and Analysis

Training in this area can help professionals prepare, interpret, and use financial statements effectively. Accurate financial reporting and analysis are crucial for effective decision-making and transparency.

f) Sustainability and Environmental, Social, and Governance (ESG) Criteria

There is a growing emphasis on sustainable investing and ESG criteria. Understanding these concepts helps professionals incorporate sustainable practices and align with global standards. Promoting the idea of sustainability and ESG aligns with global trends towards responsible investing and corporate social responsibility.

3. *Do you agree with the proposed consequential changes to Principle C.1 and CP C.1.1 of the CG Code? Please provide reasons for your views.*

We agree with the proposed changes. With the proposed consequential changes to Principle C.1 and CP C.1.1 the relevant changes can be documented to standard. Additionally, with strict regulatory requirements, the enforced training could help ensure the current standards and regulations are being followed, leading to fewer risks being identified.

4. Do you agree with our proposal to upgrade the current RBP to a CP requiring issuers to conduct regular board performance reviews at least every two years and make disclosure as set out in CP B.1.4? Please provide reasons for your views.

We agree with the proposed changes in general. However, it would be more effective if the HKEX could provide a standardised template and review checklist. This would enable other companies to easily compare their disclosures with other listed companies, and for stakeholders to make an informed decision.

We further suggest adding subsections (e.g. finance, law, accounting) to be able to easily assess the performance of board members in specific domains. This would provide a clearer understanding of the board's collective performance and proficiency, leading to more informed decision-making by stakeholders.

This is to keep up with the trend of using of big data analytics for listed companies that demand for standardisation of their information and disclosure going forward. This could greatly enhance the effectiveness of these disclosures. With standardised data, NGOs and other entities could leverage this data-driven approach to identify trends, best practices, and areas for improvement across the market. The HKEX should promote standardisation of disclosure going forward that will help promoting transparency of the market in the long run.

Lastly, implementing a standardised disclosure template would help close any gaps and reduce potential loopholes in reporting. By ensuring that all companies adhere to a uniform set of disclosure requirements, the HKEX can promote a higher level of corporate governance and mitigate the risk of selective or incomplete reporting as well.

5. Do you agree with our proposal to introduce a new CP requiring issuers to maintain a board skills matrix and make disclosure set out in CP B.1.5? Please provide reasons for your views.

We agree with the proposal in general since it would benefit the nomination committee regarding reviewing the structure, size, and composition of the board in a more thorough way. This is in line with the disclosure regulations set out by the Australian Securities Exchange where the disclosure of a board skills matrix is mandatory on an annual basis.¹

¹ Australian Securities Exchange: 'Board Structure Good Governance Guide'
<<https://www.asx.com.au/documents/asx-compliance/creating-disclosing-board-skills-matrix.pdf>>

However, we further suggest that the HKEX provide a template and board skills matrix form or checklist for a standardised disclosure, which will help the public easily compare the disclosure with other listed companies.

Similar to our opinion of Question 4, we propose including similar subsections such as finance, law, and accounting in the standardised disclosure template to ensure that companies report relevant expertise and qualifications in key areas. Incorporating subsections on the capabilities of board members, such as their expertise in specific domains, and utilising big data analytics would provide a clearer picture of the board's collective skill set, reducing potential loopholes in reporting.

6. In relation to our proposal to introduce a “hard cap” of six listed issuer directorships that INEDs may hold, do you agree:

(a) With the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers?

(b) With the proposed three-year transition period to implement the hard cap? Please provide reasons for your views.

(a) We agree with the proposal for the Listing Rule in general. Looking to other jurisdictions, the *Guide to Fit and Proper Assessments* published by the European Central Bank states that, all members of the management body must be able to commit sufficient time to perform their functions in the institution and the time a member of the management body can commit to their functions is affected by several factors, such as the number of directorships held; the size and the context of the entities where directorships are held and the nature, scale and complexity of their activities.²

Furthermore, INEDs are expected to actively participate in board meetings, independently assess professional advice and valuations, follow up on implemented decisions, monitor internal controls, investigate red flags, understand auditors' concerns, and ensure financial statements provide a true and fair view of the company's position, among other demanding tasks.

² 'Guide to Fit and Proper Assessments' (2021)

<https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.fit_and_proper_guide_update202112~d66f230eca.en.pdf>

Given the large scope and increasing intensity of these responsibilities, we believe a hard cap must be implemented to ensure INEDs devote sufficient time to each board of each listed company they are a part of.

As the holding of multiple directorships is an important factor which may affect time commitment, for an INED holding more than 6 listed issuer directorships, it is still relatively difficult for the INED to devote sufficient time to directors and have the time and capacity to meet all of their responsibilities, especially when there are unforeseen events and in times of crisis.

Due to the increasingly complex business environment and hence the increasing demand for directors, we are of the view that an INED should not hold more than 4 listed issuers' directorships. Ideally, we believe that this should be no more than 3, however, for a smoother transition, 4 is a more practical number.

(b) We agree with the idea of a transition period, however, we disagree with the proposed three-year transition period to implement the hard cap and suggest that a two-year transition period would be enough for board succession.

7. *Do you agree with the proposal to introduce a new MDR to require the nomination committee to annually assess and disclose its assessment of each director's time commitment and contribution to the board? Please provide reasons for your views.*

We agree with the proposal to introduce a new MDR in general. Such a requirement would enhance the transparency between shareholders and annual assessments can lead to enhanced board performance and more informed decision-making.

Additionally, by formally assessing the time commitment and contribution to the board of each director, boards can identify areas where additional support or advice might be required for consistent quality and performance across each company.

8. In relation to our proposal to introduce a “hard cap” of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree:

(a) With the proposed hard cap to strengthen board independence?

(b) That a person can be re-considered as an INED of the same issuer after a two-year cooling-off period?

(c) With the proposed three-year transition period in respect of the implementation of the hard cap?

Please provide reasons for your views.

(a) We agree with the proposed hard cap since this could be an effective way of addressing whether the Long Serving INED remains capable of providing an independent and objective contribution to the board. Additionally, this proposal reduces the risk of long-term relationships that may compromise an INED’s objectivity. However, we suggest a hard cap on the tenure of Long Serving INEDS for 7 years is enough.

(b) We agree on the point of the proposed cooling-off period, the interval of the cooling-off period aligns with the duration of the existing cooling-off period in the Listing Rules for professional advisers to serve as INEDs and can provide flexibility for companies to reconsider and uphold the independence standards.

(c) We disagree with the proposed three-year transition period. In our opinion, two years are enough.

9. Do you agree with the proposal to require all issuers to disclose the length of tenure of each director in the CG Report? Please provide reasons for your views.

We agree with the proposal, given the increased transparency this proposal would bring between shareholders. By disclosing the length of tenure for each director, the proposal would allow stakeholders to assess board dynamics, governance practices, and potential independence issues, which are important for effective decision-making and risk management.

Additionally, disclosure of tenure encourages boards to regularly assess director performance and succession planning. This could promote accountability among directors and facilitates timely board renewal, ensuring fresh perspectives and skills are continually brought to the boardroom, reinforces the issuer’s commitment to robust governance practices.

10. Do you agree with our proposal to introduce a CP requiring issuers to have at least one director of a different gender on the nomination committee? Please provide reasons for your views.

We agree with the proposal in general. Requirements on board diversity can strengthen incentives for in-scope companies towards greater diversity, which may, in turn, have wider benefits in terms of the quality of corporate governance and the performance of such companies.

Diversity is also crucial for board performance and effective decision-making. By increasing the diversity within the board, there will likely be more constructive debate, a broader range of perspectives, and more informed decision-making.

The proposal also aligns with the regulations in Listing Rule 9.8.6 (10) of the UK Listing Rules, Rule 7.2.8 AR of the UK Disclosure Guidance and Transparency Rules, Recommendation 1,5 of the Australia CG Code, and Provision 2,4 of the

Singapore CG Code where the value of having an appropriate balance of skills and perspectives on board committees is required.

However, we also suggest that at least one director of a different gender should be on the **remuneration committee** as well for fair dealing of the salaries and other forms of compensation for the company's executives.

As proposed by the U.K Financial Conduct Authority (FCA), listed companies would need to report on achieving specific gender and ethnic diversity targets and such policy disclosures should apply to remuneration, audit, and nomination committees.³

³ 'PS22/3: Diversity and Inclusion on Company Boards and Executive Management' (FCA26 July 2021) <<https://www.fca.org.uk/publications/policy-statements/ps22-3-diversity-inclusion-company-boards-executive-managment>> accessed 11 July 2024

11. Do you agree with our proposal to introduce a Listing Rule to require issuers to have and disclose a diversity policy for their workforce (including senior management)? Please provide reasons for your views.

We agree with the proposal to implement a diversity policy, as it can enable a company to demonstrate its commitment to fostering an inclusive and equitable workplace, bringing in a wider range of perspectives at all levels.

Disclosure requirements are introduced in many jurisdictions, for instance, the U.K requires disclosure of the gender identity of board and executive management, as well as the gender balance of senior management and their direct reports, while Australia requires disclosure of the proportions of men and women on the board, in senior executive positions and across the workforce.

In addition, the policy should set clear, measurable goals, establish accountability, ensure inclusive hiring and promotion practices, engage employees, and be regularly reviewed for continuous improvement. Approached strategically and holistically, a diversity policy can be a valuable tool for companies seeking to build a more diverse and high-performing workforce.

12. Do you agree with our proposal to upgrade from a CP to a MDR the requirement on the annual review of the implementation of an issuer's board diversity policy? Please provide reasons for your views.

We agree with the proposal. Upgrading to an MDR ensures consistent monitoring and assessment of the board diversity; by setting a mandatory review for issuers, the importance of board diversity can be emphasized, and regular reviews can provide valuable data for companies to make informed decisions about their diversity strategies. There is also improved transparency across stakeholders where a more uniform comparison and evaluation across different issuers can be compared.

The requirement of reviewing diversity policy was also introduced by other jurisdictions, the Singapore Exchange ("SGX") requires that the board or its appropriate committee should regularly review the progress made to meet the objectives set out in the board diversity policy. Whilst not specifically spelt out, it would be appropriate for the review to be undertaken at least annually, prior to finalisation of the company's annual report.

13. Do you agree with our proposal to require as a revised MDR separate disclosure of the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management) in the CG Report? Please provide reasons for your views.

We agree with the proposal. By separating the disclosure, there will be clearer metrics on gender diversity at different organizational levels. The proposal also highlights the focus on developing diverse talent across all business lines and at different levels, essential for cultivating future board members who can bring varied perspectives, opinions, and experiences.

However, we also suggest a standardised disclosure regarding diversity in the company and senior management. For instance, the U.K FCA requires that listed companies should disclose in annual financial reports a standardised numerical table on the diversity of their board and executive management by gender and ethnicity.⁴

Australia has also implemented such standards in their *Workplace Gender Equality Act 2012*, which requires employers report against a standard set of gender equality indicators. The goal of this to “clearly see their performance from year to year, and in comparison, with other employers in their industry and across the board.” This policy, among others, was able to increase the labour force participation rate in women.⁵

This standardisation will allow listed companies to refer and compare amongst themselves and serve as a starting point to encourage scrutiny and consideration of diversity and inclusion more broadly, both at senior levels of listed companies and throughout their businesses.

Such information can also help other consultancy , think tanks, NGOs and other organisations analysing this topic that will help promoting gender diversity in the long run with a more in-depth studies and research as well.

⁴ 'Guide to Fit and Proper Assessments' (2021)

<https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.fit_and_proper_guide_update202112-d66f230eca.en.pdf>

⁵ 'Workplace Gender Equality Act 2012' (2012)

<https://www.dss.gov.au/sites/default/files/documents/11_2012/factsheet_amended_201112.pdf>

This standardised disclosure can also increase transparency for investors on the diversity of boards and should encourage additional information for investors to consider as part of their investment decisions.

14. Do you agree with our proposal to codify the arrangements during temporary deviations from the requirement for issuers to have directors of different genders on the board as set out in draft MB Rule 13.92(2) in Appendix I? Please provide reasons for your views.

We agree with the proposal. The revised proposal considers the gender diversity policy in a more rigorous way where the words “shall” be replaced with “must”, ensuring gender diversity in the workplace.

15. Do you agree with our proposal to:

(a) emphasise in Principle D.2 the board’s responsibility for the issuer’s risk management and internal controls and for the (at least) annual reviews of the effectiveness of the risk management and internal control systems; and

(b) upgrade the requirement to conduct (at least) annual reviews of the effectiveness of the issuer’s risk management and internal control systems to mandatory and require the disclosures set out in MDR paragraph H? Please provide reasons for your views.

(a) We agree with the proposal to emphasize the board’s responsibility for risk management and internal controls. The proposal reinforces the board’s responsibility for overseeing risk management and internal controls, ensuring accountability. This is in line with global best practices, ensuring robust oversight and transparency.

To enhance the effectiveness of internal controls systems reviews, the HKEX should consider specifying who should conduct these reviews. Options include qualified third-party reviewers, such as independent auditors or consulting firms, which offer objectivity and specialized expertise; an internal audit division, which possesses in-depth organizational knowledge; or the board’s audit committee, ensuring direct board oversight. The HKEX should also demand the disclosure of capacity of the reviewer too.

Regardless of who performs the review, clear criteria should be established, aligned with global standards, covering a comprehensive scope of financial, operational, and compliance controls.

Additionally, to improve transparency and accountability, the HKEX should require detailed disclosure of the review methodology, findings, remediation plans, and reviewer qualifications.

These measures would significantly enhance the quality and reliability of internal controls systems reviews, providing greater assurance to stakeholders and reinforcing the board's responsibility for effective risk management and internal controls.

(b) We agree for the same reasons stated above.

16. Do you agree with our proposal to refine the existing CPs in section D.2 of the CG Code setting out the scope of the (at least) annual reviews of the risk management and internal control systems? Please provide reasons for your views.

Given the importance of risk management and internal control systems, we agree with the proposal. We agree in principle that the scope of annual reviews should be clarified and refined, to ensure annual reviews are comprehensive and effective. This proposal aligns with practices in other developed markets, ensuring effective risk management and internal controls.

Again, the HKEX should consider specifying who should be qualified to conduct these reviews i.e. demanding disclosure of personnel involved in the review i.e. review conducted by external services providers, independent reviewers or review conducted by internal resources.

17. Do you agree with our proposal to introduce a new MDR requiring specific disclosure of the issuer's policy on payment of dividends and the board's dividend decisions during the reporting period? Please provide reasons for your views.

We agree with the proposal focusing on clarifying expectations regarding the provision of monthly updates to the board. The proposal clarifies the expectations for monthly updates, ensuring directors receive timely and relevant information.

The proposal is consistent with practices in other jurisdictions, ensuring directors are well-informed.

This is in line with EU policy, where “a description of the issuer's policy on dividend distributions and any restrictions thereon” is required.⁶

18. Do you agree with our proposal to introduce a Listing Rule requirement for issuers to set a record date to determine the identity of security holders eligible to attend and vote at a general meeting or to receive entitlements? Please provide reasons for your views.

We agree with the proposal. Establishing a record date provides a clear and transparent mechanism for the securities holders and the market to determine which security holders are eligible to participate in corporate actions. The requirement also inclines with the major jurisdictions from US, UK, and Mainland China.

Additionally, a record date ensures that only those who hold securities at a specific point in time can vote or receive entitlements. This prevents last-minute securities transfers only to influence outcomes or unfairly obtain benefits, thus promoting fairness among security holders.

Moreover, by implementing a clear and consistent approach to determining eligibility for corporate actions, issuers can enhance investor confidence. Investors are more likely to trust a system that is predictable and fair, which can positively impact the market perception of the issuer.

19. Do you agree with our proposal to codify our recommended disclosures in respect of issuers' modified auditors' opinions into the Listing Rules? Please provide reasons for your views.

Given the importance of transparency, we agree with the proposal in general. Codifying the disclosure requirements for modified auditor's opinions will provide more detailed and/or additional information and enhance transparency between stakeholders.

⁶ 'Commission Delegated Regulation' (EU) 2019/980, European Parliament and the Council, 14 March 2019

Additionally, detailed disclosures of modified auditor's opinions can help investors and regulators to better understand the underlying issues, reassuring investors about the reliability and integrity of the financial statements.

20. Do you agree with our proposal to clarify our expectation of the provision of monthly updates in CP D.1.2 and the note thereto? Please provide reasons for your views.

Generally, we agree with the proposal. Directors need timely, high-quality information to facilitate informed discussions at board meetings. By stating the management's responsibility to provide monthly updates regarding monthly management accounts and management updates, the proposal ensures that the board receives all necessary information to make informed decisions, which are crucial for evaluating the issuer's financial performance and position as well as identifying any irregularities.

Additionally, clear guidelines regarding the provision of monthly updates can foster transparency between management and the board. Encouraging directors to request additional information if needed also ensures that the board remains actively engaged with each other, providing effective governance.

This transparency can build trust and ensure that all parties are aligned in their understanding of the company's performance and prospects.

21. Do you agree with our proposal to align requirements for the nomination committee, the audit committee and the remuneration committee on establishing written terms of reference for the committee and the arrangements during temporary deviations from requirements as set out in draft Main Board Listing Rules 3.23, 3.27, 3.27B, 3.27C and 8A.28A in Appendix I? Please provide reasons for your views.

We agree with the proposal in general. Aligning the requirements across all three mandatory board committees ensures a consistent approach, reducing confusion and enhancing clarity.

This uniformity and standardization can help issuers understand and comply with the rules more effectively. Additionally, the arrangements for temporary deviations could provide transparency to the market about the issuer's plans to rectify such

deviations. This transparency builds investor confidence and trust in the company's governance practices.

22. Do you agree with the proposed implementation date of financial years commencing on or after 1 January 2025, with transitional arrangements as set out in paragraphs 182 to 183 of the Consultation Paper? Please provide reasons for your views.

The proposed implementation date and transitional arrangements acknowledge the need for continuity in board composition. By allowing a two-year transition period for caps on the tenure of Long Serving INEDs and over-boarding, companies will have enough time to understand, identify and appoint suitable replacements, ensuring a smooth transition and maintaining board stability.

Conclusion

We commend HKEX's ongoing efforts to promote board diversity and enhance risk management practices, especially in regard to board objectivity and effectiveness, which are crucial in fostering a robust and resilient capital market.

We hope that the focus on board diversity and robust risk management frameworks will strengthen decision-making and investor confidence in the market. We encourage HKEX to maintain its vigilance and continue adapting policies to address emerging risks, solidifying its position as a world-class exchange committed to good corporate governance.

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