

Submitted via Qualtrics

(Anonymous)

Personal view

Others (please specify)

Question 1

Do you agree with our proposal to introduce a new Code Provision (CP) under the Corporate Governance Code (CG Code) requiring issuers without an independent board chair to designate one independent non-executive director (INED) as a Lead INED to enhance engagement with investors and shareholders?

Yes

Please provide reasons for your views.

This fills the gap when the Chair is not independent and helps to better enhance shareholders' interests. However, the proposal does not have advice on the qualification and competence of the Lead INED. In practice, listed entities have one INED with financial background and often another with legal background, and the financial one usually chairs the Audit Committee. These specific-profession INEDs do not have broad enough perspectives and skills to serve the purpose of a Lead INED.

Question 2(a)

Regarding continuous professional development for directors, do you agree with our proposal to make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours?

No

Please provide reasons for your views.

I agree making continuous professional development mandatory for all existing directors, but it is in effect equivalent no requirement if a minimum number of training hours is not specified. Given the fast changing environment, technology and risks, and for such an important function, it is only reasonable that at least 12 hours a year of training is necessary. Moreover, a director is supposed to lead the issuer to innovate and change. No knowledge can remain sufficient over time.

Question 2(b)

Regarding continuous professional development for directors, do you agree with our proposal to require First-time Directors to complete a

minimum of 24 hours of training within 18 months following their appointment?

Yes

Please provide reasons for your views.

Agree with the rationale you stated.

Question 2(c)

Regarding continuous professional development for directors, do you agree with our proposal to 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?

Yes

Please provide reasons for your views.

Agree with your rationale.

Question 2(d)

Regarding continuous professional development for directors, do you agree with our proposal to specify the specific topics that must be covered under the continuous professional development requirement?

Yes

Please provide reasons for your views.

If the scope is not specified, directors can choose training which is too easy for them to fulfil but fail to equip them with necessary knowledge to cope with change, risks, etc. Essential topics must be specified instead of leaving to the listed entities or directors to choose for themselves.

In this regard, HKEX should note that anti-corruption training is particularly highlighted under all ESG standards. The importance of this cannot be understated: UNSDG (16.5) and all ESG standards particularly include anti-corruption as a component of ESG; GRI comments that corruption has negative impacts including poverty, damage to environment, abuse of human rights, misallocation of investments; the World Economic Forum pointed out that corruption will siphon money away from healthcare, education, housing, clean water, etc.; The Global Impact assessed that corruption is the ultimate risk to all ESG objectives. Indeed, anti-corruption should not be under-assessed as only one small component of ESG, but corruption can cause all ESG initiatives to fail, and in fact ESG policies INCREASE corruption risks,

e.g. new sustainable procurement policy will create pressure and incentives for suppliers to bribe, eagerness to perform in community projects can increase the risk of misuse of funds and donation, etc. However, issuers may meet reporting requirements by arranging anti-corruption training only for junior staff or new staff, overlooking that this is more important for management, senior management and board directors, which set and review policies, devise controls, manage risks, and set tone at the top. As such, anti-corruption must be explicitly stated as a required annual training for directors and senior management. Moreover, the scope and content needs to be specified: the training cannot simply be on knowledge of the anti-bribery law and a don't bribe message, but tailored corruption risk assessment update for the industry and issuer to facilitate their corruption risk assessment, plus advice/reminder on the corruption prevention system and measures, by competent personnel.

A related observation: it undermines the nature of anti-corruption to place anti-corruption reporting under the Social aspect in ESG reporting. Anti-corruption training for board directors and top management should be an item to report under the Governance aspect.

Question 3

Do you agree with the proposed consequential changes to Principle C.1 and CP C.1.1 of the CG Code?

No

Please provide reasons for your views.

As I have pointed out, to align with ESG standards which highlight anti-corruption training which should not be misunderstood as only for junior and operational staff, anti-corruption should be explicitly mentioned in directors' training requirement.

Question 4

Do you agree with our proposal to upgrade the current Recommended Best Practice (RBP) in the CG Code 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?

Yes

Please provide reasons for your views.

agree with your rationale

Question 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?

Yes

Please give reasons for your views.

Despite literature and sustainability goals have long advised listed entities not to only focus on financial performance, issuers still focus on the skillsets of financial and legal professionals only for INEDs. Given the importance of ESG, a mix of skills in each of E, S, G is necessary; and as pointed out in my response to Q2, anti-corruption plays a crucial role in all ESG goals. It is however is a specialty that is NOT possessed by general audit and legal professionals, which issuers have often assumed, which is one reason for the findings mentioned in para. 138 and 139. The skills mix should include integrity management, ethical conduct and anti-corruption.

Question 6(a)

In relation to our proposal to introduce a “hard cap” of six listed issuer directorships that INEDs may hold, do you agree with the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers?

No

Please provide reasons for your views.

I agree to set a cap, but a cap on the number of HK issuer directorship is not addressing the real issue. As you have recognised, a director may have public services directorship (up to 6), other public services, non-listed entities' directorship, employment, overseas directorship and engagement, etc. A more logical and realistic approach is to require the issuer to ensure that a director has a minimum amount of time (e.g. hours per month) for the issuer, and assess the time commitment of ALL the director's other engagements and commitments to ensure that the numbers add up.

I wish to point out that the undesirability of over-directorship is not only about time commitment, but the risk of dominance of too many directorship and related services, and the conflict of interest arising from the complex web of too many relationships. Dominance is also not conducive to development of directorship talents and diversification of board skills for the long-term benefit of Hong Kong. As such, a transition period of 3 years is too lenient.

Question 6(b)

In relation to our proposal to introduce a “hard cap” of six listed issuer directorships that INEDs may hold, do you agree with the proposed three-year transition period to implement the hard cap?

No

Please provide reasons for your views.

Too lenient.

Question 7

Do you agree with the proposal to introduce a new Mandatory Disclosure Requirement (MDR) in the CG Code to require the nomination committee to annually assess and disclose its assessment of each director’s time commitment and contribution to the board?

Yes

Please provide reasons for your views.

This is to ensure sufficient oversight of the board, and also this is directly linked to the proposal of a cap on directorship which aims at ensuring sufficient commitment and contribution. This proposal directly measures such commitment and contribution.

Question 8(a)

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 with the proposed hard cap to strengthen board independence?

No

Please give reasons for your views.

Independent is much weakened after 5 years. To align with public boards, a 6 year cap is more desirable.

Question 8(b)

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

No

Please provide reasons for your views.

Once a person (INED) becomes too closely acquainted with another (major shareholder, chair/CEO), a cooling off period of 2 years is meaningless, unless there is a change of composition of the Board and major shareholdership.

Question 8(c)

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 with the proposed three-year transition period in respect of the implementation of the hard cap?

No

Please provide reasons for your views.

Too lenient. If you maintain a cap of 9 years, then adding the 3 year transition, the length will be 12 years.

Question 9

Do you agree with the proposal to require all issuers to disclose the length of tenure of each director in the CG Report?

Yes

Please provide reasons for your views.

basic transparency

Question 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?

Yes

Please provide reasons for your views.

As nomination committee needs to identify and nominate directors and the whole board needs gender diversity, it is reasonable to include a different gender in the nomination committee.

Question 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)?

Yes

Please provide reasons for your views.

align with ESG reporting principles.

Question 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?

Yes

Please provide reasons for your views.

align with ESG principles

Question 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?

Yes

Please provide reasons for your views.

align with ESG principles

Question 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 Main Board Listing Rule 13.92(2) in Appendix I?

Yes

Please provide reasons for your views.

Just guidance is not effective and unfair as there will be inconsistency in practices.

Question 15(a)

Do you agree with our proposal to 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?

Yes

Please provide reasons for your views.

RMIC is of such importance to an issuer's performance and even survival that the board's responsibility should be emphasized to ensure RMIC's effectiveness and consistent practices by all issuers.

Question 15(b)

Do you agree with our proposal to 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?

Yes

Please provide reasons for your views.

RMIC is of such importance to an issuer's performance and even survival and the risks are emerging and changing as such speeds that annual reviews should be mandatory.

Question 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?

Yes

Please provide reasons for your views.

Risks are very wide. If the scope is not specified, an issuer may only focus on and review RMIC for risks that concern financial performance and return, and overlook risks of non-compliance, ethical conduct and integrity, fraud and corruption, and risks impacting on environment and sustainability. This is one reason for the result mentioned in para. 138 and 139. Para. 139 points out the lack of fraud prevention controls as

observed by SFC which I totally agree, but HKEX should take note that all ESG standards particularly highlight anti-corruption as an essential component, and align its Rules with the global standards to highlight the importance of anti-corruption for compliance by all issuers. I wish to reiterate my answer to Question 2.

Moreover, Hong Kong has a generally good anti-corruption environment, hence highlighting anti-corruption allows Hong Kong's advantage to stand out, while at the same time ensuring this advantage is maintained. I therefore suggest explicitly adding "corruption" in D2 Principle: "The board is responsible for ... safeguarding the issuer's assets, preventing and detecting corruption and fraud", D.2.1(a): "including financial, operational compliance, and corruption and fraud prevention controls".

The second issue is the way RMIC in particular anti-corruption control reviews are conducted and by whom. Without any requirement or guidance, issuers may take the easy way of conducting internal reviews by not adequately qualified staff, or appoint a single audit firm with mainly financial/accounting expertise but not expertise in other operational and corruption RMIC, to review RMIC. As a result, such reviews would be tilted largely towards only financial controls and reporting, with inadequate expertise to cover corruption and fraud prevention and other operational RMIC. This is probably why SFC has the observation in para. 139. If HKEX wants to ensure effective RMIC and RMIC reviews, there needs to be requirements/guidance on the way the reviews are conducted: there should be separate reviewers for financial controls, operational controls (which should be further separated into general business operations, anti-corruption system, cybersecurity, etc.), which should be performed by separate, dedicated specialists (although these could be coordinated and managed by a main consultant for convenience).

Question 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?

Yes

Please provide reasons for your views.

Shareholders are concerned about dividends.

Question 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?

Yes

Please provide reasons for your views.

agree with your rationale

Question 19

Do you agree with our proposal to codify our recommended disclosures in respect of issuers' modified auditors' opinions into the Listing Rules?

Yes

Please provide reasons for your views.

agree with your rationale

Question 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?

Yes

Please provide reasons for your views.

agree with your rationale

Question 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?

Yes

Please provide reasons for your views.

agree with your rationale

Question 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?

No

Please provide reasons for your views.

The process in paras. 182 and 183 are too lengthy.