

Our Ref: GE/CS/07/24

2 August 2024

BY EMAIL (RESPONSE@HKEX.COM.HK) AND BY POST

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

Dear Sirs,

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

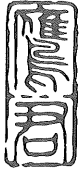
We refer to the Consultation Paper (“Consultation Paper”) on Review of Corporate Governance Code and Related Listing Rules published by the Exchange on 14 June 2024. We acknowledge and value the Exchange's dedication to reviewing the current Corporate Governance framework. This initiative purportedly aims to uphold and enhance high-quality corporate governance standards, ensuring investor confidence in the market. However, it is crucial to strike a healthy balance, taking into account the practical circumstances in Hong Kong and Greater China. We should try to avoid imposing an overwhelming burden of compliance and reporting requirements on the listed companies. Taking this opportunity, we would like to share our views on the key proposals relating to Independent Non-executive Director (“INED”) as set out in the Consultation Paper as follows:

(a) Designation of Lead INEDs

As stated in the Consultation Paper, the reason for designating a Lead INED is to provide shareholders with independent insight on aspects of an issuer's governance such as the quality of board discussions.

It is crucial to recognize the distinct roles and responsibilities of INEDs within the board structure. INEDs typically possess high-level knowledge of the organization, focusing primarily on compliance issues, risk assessments, and control matters. There are various measures that can be taken to enhance INED effectiveness and accountability apart from appointing a Lead INED.

Firstly, our view stems from the legal stipulation that all directors bear equal responsibility and all INEDs must serve the board with independent perspective towards protecting the shareholders and the long-term interests of the company (not calling attention to the Lead INED).



Secondly, we are also of the view that Hong Kong market is different from other jurisdictions which can mandate and designate a Lead INED. In the Hong Kong market, majority of the board members are generally executive directors and non-executive directors. We consider appointing a Lead INED may only be effective where majority of the board consists of INEDs. Furthermore, the major shareholders in Hong Kong listed companies, in many cases, have more than 50% of the issued share capital of the company. In such cases, appointing a Lead INED may not carry the intended weight for the independent shareholders in the decisions of the board. In the connected transactions scenarios, the independent shareholders are already covered by an independent board committee which is required to be formed and the major shareholder is also required to abstain from voting.

Thirdly, enormous pressure would be thrust solely upon the Lead INED. We are of concern that the appointment of a Lead INED might affect other INEDs' perception of their roles and responsibilities. INEDs carrying equal weights on the board helps to broaden the opinion base and generate balanced views.

In addition, since INEDs are part-timers, their involvement in the operational aspects of the group is limited, and therefore, their ability to answer detailed questions related to business operations may be limited as well. Although the regulator also would not expect a Lead INED to discuss the issuer's potential and actual results and operational matters with investors or shareholders, it is always difficult to stop them from asking. That may cause much embarrassment to the Lead INED. More importantly appointing a Lead INED does not guarantee that all investor inquiries will be adequately addressed or answered correctly by the "Lead INED".

Furthermore, the existing governance structure, including the roles of the board of directors and various board committees, already provides avenues for communication and engagement with shareholders. Designating a Lead INED could potentially lead to a duplication of responsibilities, as other board members and committee chairs are already responsible for shareholder interaction and transparency. This redundancy may create confusion and may potentially impede the efficiency and effectiveness of the existing committee chairpersons. It could create a perception that the Lead INED's opinions or actions carry more weight, potentially overshadowing the valuable contributions of other board members, including the Executive Directors who should be more familiar with the strategy and operations of the company.

Potentially the Lead INED's workload might push this job to become a full time job, so he cannot be an INED. Furthermore, the Lead INED might be inadvertently stepping into sensitive information area if he is pressured too much by activist shareholder.



If the Lead INED is expected to act as an intermediary between directors and shareholders, there is a risk to impair their objectivity and impartiality as they may then be potentially under pressure from some particular groups of minority shareholders including activist shareholders, who may have different investment philosophies or objectives from the long-term shareholders.

Currently, all important information has been officially disclosed in accordance with the Listing Rules. All key points have been clearly explained, and the announcements for major transactions have also undergone scrutiny and vetting through the Exchange. Therefore, we do not consider it is necessary to appoint a Lead INED and require that director to meet with shareholders or investors for explanations. The proposed suggestion may give rise to concerns as certain investors, dissatisfied with the company's individual transactions, may direct their frustration towards the Lead INED as a means of venting their emotions. Once this flood gate is opened, the consequence could potentially be the opening of the door to a new career of professional independent directors and could lead to potential internal conflicts within the company and might create confusion for the staff of the company.

(b) **Mandatory Director Training**

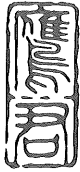
We agree that the Listing Rules shall be amended to require First-time Directors to complete a minimum of 24 training hours within 18 months of their appointment. First-time Directors need to be educated to understand and appreciate the company as soon as after his/her appointment to bring in the true value of INEDs for oversight and encourage the collaborative working relationships.

(c) **Board Performance Review**

While we recognize the need for transparency in corporate governance, we hold the view that board performance review and the mandatory disclosure on the scope, process, and findings of the board performance review may not be necessary.

Confidentiality helps preserve board unity by allowing for more open discussions and scrutiny without the consideration of any external judgements.

It is considered that when the process and findings of a board performance review are mandatorily required to be disclosed, it may become a standard cosmetic process for the listed companies for meeting the regulatory purposes. Confidentiality safeguards the board's independence and allows it to make decisions that are solely in the best interest of the company. We strongly believe performance assessment should be a matter for the board to consider internally. We consider keeping the current recommended best practice (RBP) of asking the issuers to conduct regular board performance review is sufficient.



(d) **Disclosure of Board Skills Matrix**

The proposed new Code Provision to require listed issuers to disclose skill mix of their boards and elaborate how the combination of skills, experience and diversity of their directors serves the purpose, values, strategy and desired culture of the company is agreeable. However, we consider that listed companies shall retain their own judgement on the right skill matrix of their own boards as they are steering and driving the corporate strategy and the mandatory disclosure of details and plans to acquire further skills is not necessary.

(e) **Overboarding INED and Directors' Time Commitment**

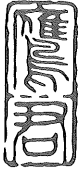
Directors have a personal fiduciary duty to act in the best interests of each company on whose board they serve. It is incumbent upon individual directors to manage their commitments effectively, ensuring they have sufficient time and attention to fulfill their obligations to each board. It is the director's personal judgment and professional capacity to manage multiple roles responsibly.

Many INEDs bring valuable expertise and experiences from different sectors or industries. By serving on multiple boards, they can leverage their diverse perspectives and knowledge to contribute to various companies' strategic decision-making. Regulating by setting a "hard cap" of six listed issuer directorships may limit the ability of companies to tap into this expertise, potentially leading to a narrower pool of candidates and a lack of diversity within boards.

The market has the ability to self-regulate director commitments and overboarding concerns. We consider the current Listing Rules requirement is sufficient to address and regulate any potential overboarding concern: that if the proposed INED holding their seventh listed issuer directorship, the board will be required to set out in the circular to the shareholders with an explanatory statement for his/her re-election. Shareholders and stakeholders can voice their concerns and exercise their voting rights during board elections to hold directors accountable for their commitments. By allowing market forces to shape directorship practices, companies can adapt to the evolving expectations and demands of shareholders without the need for regulatory intervention.

(f) **Independence of INEDs after Nine Years**

INEDs bring valuable experience to the boardroom. Their long and committed tenure allows them to develop a deep understanding of the company's operations, industry dynamics, and governance practices. Regard should also be given to the board diversity, which requires appointments to be based on objective criteria, including gender, age, cultural and educational background, ethnicity, professional experience, skills, knowledge, length of service and any other factors which the board may consider relevant and applicable from time to time. By not setting any hard cap, companies can



retain the expertise and insights of experienced INEDs, which can contribute to effective decision-making and continuity.

Independence of mind is far more important. Instead of imposing a blanket tenure limit, regular assessments of INEDs' contributions, independence, and commitment can help identify any potential concerns or issues. Current requirement of re-appointment of any INED exceeding 9-year tenure will be subject to a separate resolution to be approved by the shareholders at the annual general meeting is well structured to ensure the independency of INEDs. In view of the above, we consider that it is not necessary to provide a hard cap of nine years on the tenure of INEDs. We propose that companies have the discretion to determine INED tenure. This approach enables companies to retain the expertise and insights of experienced INEDs, which contributes to effective decision-making and continuity.

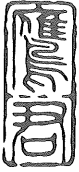
(g) Board and Workforce Diversity

While gender diversity is an important aspect of board composition, it is one element of a diverse and inclusive board. Boards should strive for diversity in terms of objective criteria including skills, backgrounds, experiences, and perspectives. A focus on gender representation on the nomination committee may dominate the need for broader diversity considerations, potentially limiting the board's ability to benefit from a wide range of perspectives.

Many companies are already voluntarily implementing diversity initiatives and setting their own targets for gender representation on boards. Encouraging and recognizing these voluntary efforts can be more effective than imposing a mandatory requirement. Companies should have the flexibility to develop their own diversity strategies and tailor them to their specific needs and circumstances.

Requiring a specific gender representation on the nomination committee may restrict the pool of eligible candidates, potentially limiting the committee's access to directors with the necessary competence, experience, and qualifications. Companies should have the openness to select directors based on their individual merits and contributions to the board, without specific constraints.

A balanced approach is of utmost importance when establishing requirements for INEDs. Imposing excessively burdensome criteria may impede the board's effectiveness and efficiency. In short, we consider that flexibility and a focus on outcomes rather than prescriptive requirements can allow for a broader range of qualified candidates and promote effective governance practices.



Most importantly, we support a Disclosure Based Regime for Hong Kong's listing matters. The rest of the world exchanges have moved mostly to this regime. Therefore, for this INED issue, we would also propose adopting a Disclosure Based Regime where each INED's background, skills, years in service, attendance, numbers, genders are all disclosed properly, but the actual operation and governance should be left to the company and its board.

Thank you for your attention.

Yours faithfully,
For and on behalf of

