Submitted via Qualtrics

(Anonymous)

Company/Organisation view

Listed Company

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

<u>Question 2(d)</u>

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?

Please provide reasons for your views.

<u>Question 3</u>

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.

<u>Question 4</u>

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?

Please provide reasons for your views.

<u>Question 5</u>

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 give reasons for your views.

<u>Question 6(a)</u>

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?

Please provide reasons for your views.

<u>Question 6(b)</u>

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?

Please provide reasons for your views.

<u>Question 7</u>

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?

Please provide reasons for your views.

<u>Question 8(a)</u>

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.

Rather than strengthening board independence, there are concerns that the proposed hard cap would have the unintended result of:

- adversely impacting the continuity and stability of boards
- causing the loss of valuable knowledge and expertise
- adversely impacting corporate governance and the proper functioning of INEDs
- increasing business risk

Adversely impacting continuity and stability

We respectfully submit that enforcing a hard cap would likely negatively impact the continuity and stability of our board and, potentially, undermine good corporate governance.

We note that, under the proposals, INEDs who constitute Long Serving INEDs may be retained as NEDs, thus enabling listed issuers potentially to achieve some measure of continuity and stability of the board. However, the imposition of a hard cap will invariably lead to changes at the board level as listed issuers will need to maintain a balance of executive directors, NEDs and INEDs. Such change would likely impact the continuity and stability of the board, particularly for companies which would need to change the entire set (or the majority) of INEDs.

Loss of valuable knowledge / expertise

In addition, we respectfully submit that enforcing a hard cap would likely lead to a loss of valuable knowledge and expertise. As the Exchange acknowledges in the Consultation Paper, by nature of the length of their tenure, Long Serving INEDs will have accumulated valuable knowledge of, and are familiar with, the issuer's affairs and industry over time. To the extent that directors with such valuable knowledge and expertise have to vacate their positions, such turnover will result in boards losing valuable experience, skills and experience.

The Consultation Paper notes regulators in UK and Australia recognize in their corporate governance codes that a director's lengthy tenure on the board could impair (or appear to impair) their independence. However, the UK and Australian regulators do not to impose a hard cap on the length of an INED's tenure. Instead, (i) in the case of the UK, it is a "comply or explain" rule such that the tenure of INEDs can extend beyond nine years if the board still considers him/her to be independent and provides a clear explanation for this; and (ii) in the case of Australia, it is merely one of the factors relevant to assessing the independence of a director.

Code Provision B.2.3 in Part 2 of Appendix C1 (CG Code) of the MB Rules currently provides: "If an independent non-executive director has served more than nine years, such director's further appointment should be subject to a separate resolution to be approved by shareholders. The papers to shareholders accompanying that resolution should state why the board (or the nomination committee) believes that the director is still independent and should be re-elected, including the factors considered, the process and the discussion of the board (or the nomination committee) in arriving at such determination." We respectfully submit that the existing Code Provision B.2.3 already puts Hong Kong's CG Code on par with the UK and Australia corporate governance codes and addresses the concerns arising in relation to Long Serving INEDs whilst enabling listed issuers to preserve continuity, stability and accumulated knowledge and expertise.

Adversely impacting corporate governance and the proper functioning of INEDs

Code Provision C.1.7 in Part 2 of Appendix C1 (CG Code) of the MB Rules currently provides: "Independent non-executive directors and other non-executive directors should make a positive contribution to the development of the issuer's strategy and policies through independent, constructive and informed comments." Furthermore, as set out in the Exchange's "A Snapshot of INEDs' Roles and Responsibilities (November 2023)", an INED's role includes:

Role in the review and approval of business decisions and transactions (page 3):

- ensure there is sufficient information to make informed decisions on the matters at hand

- participate and ask questions – raise concerns with the board of directors and exercise independent judgement. Do not merely rely on responsible directors or representations of executive management
- independently assess professional advice and the reasonableness of valuations
- after a business matter or transaction is approved, ensure that there is a mechanism in place for follow-ups on the proper conduct of the business, implementation and Listing Rule compliance

Role in internal controls (page 4):

- take an active role in designing, implementing, reviewing and monitoring the effectiveness of the company's internal controls and procedures
- independently assess and review the internal controls and procedures. Do not simply rely on representations by management
- assess and ensure that internal controls do not only exist on paper but are properly implemented in the day-to-day business operations by management and staff
- where internal control deficiencies are identified, take steps to ensure that they are properly addressed and rectified. Regular meetings and reporting should take place to monitor the progress of implementation of remedial measures and enhancements

Role in incident management (page 6):

- where red flags have been highlighted, tangible efforts should be made to investigate, and follow up on whether, and how, the red flags have been addressed
- apply independent judgement to incident assessment and do not simply rely on management to address possible compliance issues

These important INED roles and responsibilities which are currently set out in the CG Code, amongst others, can be properly fulfilled only by INEDs, including Long Serving INEDs, who possess the depth of expertise and length of experience accumulated over time with the listed issuer to serve as an "extra pair of eyes". Newer INEDs without depth of expertise and length of experience accumulated over time with the listed issuer will not be as effective as INEDs. We respectfully submit that the implementation of a hard cap to address potential concerns involving Long Serving INEDs will, in some cases, inadvertently weaken the oversight functions performed by experienced INEDs overseeing the company's risk management and internal controls and thereby undermine good corporate governance of listed issuers. This problem is further exacerbated for listed issuers, including for [redacted], who would need to change their entire set of INEDs as a result of this hard cap.

Increase of business risk

With reference to the issues concerning 'corporate governance and INEDs functions' identified immediately above, experienced and established INEDs (including Long Serving INEDs) are, compared to newer, less experienced INEDs, in a much better position to identify and understand the risks involving the issuer group's operations, development, financial performance and of new businesses, including at the subsidiary level and relating to joint ventures. If listed issuers are required to appoint brand new INEDs (in [redacted]'s case, being an entirely brand-new set of INEDs), we are concerned the board's oversight ability would be materially weakened and, consequently, the company's business risks heightened.

Practical challenges

In addition to the concerns 'of principle' raised above, there are also a number of significant practical challenges that would arise if the proposed hard cap on tenure of INEDs were to be implemented. These are discussed in detail below in relation to Question 8(c).

In light of the above, we respectfully submit that a hard cap should not be imposed on the tenure of INEDs.

<u>Question 8(b)</u>

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?

Please provide reasons for your views.

We refer to our response to Question 8(a) above, in which we respectfully submit that a hard cap should not be imposed on the tenure of INEDs.

However, if the Exchange does ultimately decide to impose such a cap, we would welcome the Exchange's proposal to allow such individual to be re-considered as an INED of the same issuer after a two-year cooling-off period.

We have the following general comment:

- Frequently Asked Questions FAQ 1.4 provides that an existing NED may be re-designated as an INED, but the Exchange will consider the individual's present or past relationship with a connected person or the listed issuer on a case-by-case basis. We believe FAQ 1.4 helpfully complements the introduction of a fixed two-year cooling-off period by providing for flexibility for NEDs to be re-designated as INEDs on a case-by-case basis within the two-year cooling-off period in special cases.

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.

We refer to our response to Question 8(a) above, in which we respectfully submit that a hard cap should not be imposed on the tenure of INEDs.

However, if the Exchange does ultimately decide to impose such a cap, we respectfully submit that the transition period should be modified by either:

(i) an extension to seven years; or

(ii) a staggered implementation period.

If neither of the suggestions in (i) or (ii) above is adopted by the Exchange, we respectfully submit that (iii) listed issuers whose entire set (or the majority) of INEDs will become Long Serving INEDs on 1 January 2028 should, at minimum, be allowed to seek a waiver allowing for an extended transition period. Details involving suggestions (i), (ii) and (iii) are set out below. These suggestions are made in light of the practical and logistical challenges listed issuers will face in implementing the hard cap, notably:

- the pool of talent possessing the qualities and expertise to serve as INEDs (including INEDs with the appropriate professional qualifications or accounting or related financial management expertise) is limited. This is particularly the case for listed issuers which operate in specialized industries and markets (e.g. [redacted] and the gaming industry in Macao) where there is a limited number of individuals who have sufficient knowledge and the requisite expertise;

- identifying, recruiting and onboarding the right candidates for INED roles is not a simple or straightforward task and will require some time to do properly;

- the challenge of finding the right candidates amongst a small pool of talent will inevitably be exacerbated by the large number of listed issuers which will have to search for, recruit and onboard new INEDs at the same time during a short transition period to comply with this hard cap since they will all be ‘fishing in the same small pond’;

- some listed issuers will be disproportionately impacted by the introduction of a hard cap. For example, if all or a majority of their current INEDs would be affected by the hard cap. Such issuers will need more time to find and appoint new INEDs. This is the case for [redacted] since all our existing INEDs will become Long Serving INEDs at the conclusion of the proposed three-year transition period;

- consequently, other initiatives to improve board effectiveness in the Consultation Paper may inadvertently be undermined by the short three-year transition period for Long Serving INEDs. For example, the Consultation Paper also proposes for issuers without an independent board chair (which currently includes [redacted]) to designate one INED as a Lead INED.

The primary responsibility of the Lead INED would be to facilitate and strengthen communication: among INEDs; between INEDs and the rest of the board; and with shareholders. In order to perform the role of Lead INED effectively and as envisaged by the Exchange, we respectfully submit that the position of Lead INED should be performed by an experienced and established INED familiar with his/her fellow INEDs, the board, the shareholders, the issuer, and the issuer's business and operating environment. However, as noted above, all our existing INEDs will become Long Serving INEDs at the conclusion of the proposed three-year transition period. That would necessarily mean that the only INEDs available to be appointed as Lead INED would be a candidate who has served for three years or less on the board. This is simply not ideal and can inadvertently undermine the very purpose of the Lead INED;

- listed issuers require time to plan and ensure continuity and stability of the board. The hard cap not only impacts board composition but also impacts the composition of the various board committees (i.e. the Listing Rules mandate composition, chairmanship, and/or qualification requirements for INEDs on the audit committee, remuneration committee and nomination committee). Furthermore, in the interests of good corporate governance and from a practical perspective, we respectfully submit that newer INEDs should ideally have a few years to observe the workings of the board committees as a board committee member before taking up the mantle of chairmanship on the board committee, in order to be able to perform their roles effectively. The Listing Rules mandate that the chair of the audit committee and remuneration committee must be an INED. For issuers like [redacted], this presents a problem where a whole new set of INEDs and new board committee memberships and chairmanships are required to be appointed during a short three-year period with all incoming INEDs being brand new;

- as noted in the Consultation Paper, the three-year transition period represents the length of one term of office, after which a director would be subject to retirement by rotation. To rotate out all Long Serving INEDs during the course of one director rotation cycle would potentially have a significant impact on the listed issuer, particular in relation to continuity and stability and preservation of accumulated knowledge and expertise;

- if listed issuers are required to appoint INEDs so quickly and if listed issuers are, effectively, forced to appoint INEDs who they believe are not suitable (simply to comply with the proposed hard cap requirement), we respectfully submit such development is not conducive to shareholder protection, good corporate governance nor the excellent reputation of the Hong Kong market; and

- depending on specific circumstances, certain listed issuers may have more of a need for board stability over the next three years. For example, the listed issuer may be in the middle of a corporate transaction or the market or industry they are in is currently in a state of flux. For example, with the signing of a new 10-year gaming concession in Macao in 2022, concessionaires were required by the Macao government to commit to significant capital expenditure. [redacted] If a whole new set of INEDs needs to be found and appointed midway through this period, who do not possess the background, this will not be to the benefit of the company.

For the reasons above, we respectfully submit that, if the Exchange does ultimately decide to impose the proposed hard cap, the transition period should be modified. We respectfully set out our suggested modifications below for the Exchange's consideration, being:

Proposal (i): The transition period should be extended to seven years, which allows for two director rotation cycles. This would afford listed issuers sufficient time to address the practical and logistical challenges of the hard cap that are identified above.

Proposal (ii): To set out a staggered implementation period in the Listing Rules over seven years. This is to allow listed issuers whose entire set (or the majority) of INEDs will become Long Serving INEDs on 1 January 2028 to phase out Long Serving INEDs in an orderly manner while mitigating the practical and logistical challenges highlighted above. To this effect, we would suggest that where all the INEDs of an issuer have served more than nine years on the board, the issuer would be mandatorily required to:

(a) appoint one new INED by 1 January 2028 (i.e. an upgrade to a rule requirement from the existing Code Provision B.2.4(b) in Part 2 of Appendix C1 (CG Code) of the MB Rules);

(b) have at least two new INEDs by 1 January 2029;

(c) have a majority of new INEDs by 1 January 2030; and

(d) fully implement the Long Serving INED requirement by 1 January 2032.

We respectfully submit that proposals (i) and (ii) above, with a longer implementation period, strikes a balance between the gradual and orderly phasing out of Long Serving INEDs and mitigating the adverse impact from the practical and logistical challenges that a short three-year transition period would cause.

If neither of the suggestions in (i) or (ii) above is adopted, we respectfully submit that listed issuers whose entire set (or the majority) of INEDs will become Long Serving INEDs on 1 January 2028 should, at minimum, be allowed to seek a waiver allowing for an extended transition period as detailed in suggestion (iii) below.

Proposal (iii): Our suggestion for the introduction of a waiver mechanism is to extend the transition period from three years to a longer period (for example to five years or seven years) so as to allow listed issuers whose entire set (or the majority) of INEDs will become Long Serving INEDs or with other special circumstances (for example, issuers in highly regulated and/or specialized industries and markets where there is a limited number of individuals who have sufficient knowledge and the requisite expertise to serve as INEDs) more time to comply with the Long Serving INED requirement. For avoidance of doubt, we do not suggest to introduce a blanket waiver to Long Serving INEDs. If the Exchange were to introduce a waiver mechanism, in the interests of clarity, we would be grateful if the Exchange would provide guidance to the market on the relevant parameters it will consider when granting such waiver for extending the transition period on an individual basis.

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.

In the spirit of transparency and good corporate governance, we welcome the Exchange's proposal to require all issuers to disclose the length of tenure of each director in the CG Report to improve 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?

Please provide reasons for your views.

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)?

Please provide reasons for your views.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

<u>Question 14</u>

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?

Please provide reasons for your views.

<u>Question 15(a)</u>

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?

Please provide reasons for your views.

<u>Question 15(b)</u>

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?

Please provide reasons for your views.

<u>Question 16</u>

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.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

Question 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.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

<u>Question 22</u>

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.