

Submitted via Qualtrics

(Anonymous)

Company/Organisation view

Professional Body / Industry Association

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?

No

Please provide reasons for your views.

- As stated on the HKEX website, the role of INED is to provide independent judgment on issues of conflict and decisions made by the board. Their primary role is to act as a check and balance on the board, not for enhancing engagement or communication with investors and shareholders. It is more important for INEDs to remain independent and less involved with a company's stakeholders in order to effectively fulfil their oversight function.
- All directors, including INEDs, have the same fiduciary duties and duties of skill owe to the shareholders and the company. Designating a "Lead INED" could be seen as implying that a particular INED has taken on an executive or semi-executive role, which would be at odds with the concept of all directors having equal roles and responsibilities under a unitary board structure.
- It is unclear how a Lead INED could meaningfully enhance a company's engagement with investors and shareholders. Communications with investors is typically the responsibility of executive directors who are involved in the day-to-day management of the company.
- Engaging with investors and shareholders on a regular basis is a full time endeavour. Most large listed companies already have dedicated investor relations departments to handle shareholder communication and engagement.

- There is a limited supply of qualified INED candidates, especially those residing in Hong Kong. It would be challenging to find individuals willing and able to take on the additional responsibilities of a Lead INED, particularly given the potential conflicts with the INED's primary oversight role.
- We also note that this recommendation is following the practice in the UK, where the shareholding structure of listed companies tends to differ from that in Hong Kong, with far fewer companies listed in the UK having majority shareholders. Therefore, we consider this recommendation to be less applicable to Hong Kong.

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.

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?

Please provide reasons for your views.

Question 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.

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?

Please provide reasons for your views.

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?

Please give reasons for your views.

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.

While we agree that INEDs should devote sufficient time and attention to the company’s affairs, we do not agree with the proposal to impose a hard cap on the number of listed directorships. We are of the view that nomination committees and boards of listed companies should have considered whether the designated INED can devote sufficient time to the company’s affairs, in addition to other factors including skillsets, educational background, relevant qualifications, etc. Furthermore, the relevant time spent by an INED on a company’s affairs is subject to ongoing evaluation and monitoring. In addition, time spent on company affairs can vary substantially from a large, complex, international listed company to a small local one. We are therefore of the view that this matter should remain principle-based rather than rule-based.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

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.

- We cannot agree that if INEDs sit on the board of a company for a period exceeding nine years, they will no longer be considered to be independent. The length of service is only one of the possible measures of an INED's independence. There is no convincing, let alone conclusive evidence that the independence of an INED is compromised once they have served beyond a certain number of years. An INED could, for different reasons, compromise their independence in their first year of service. Conversely, a long-serving INED, with their intimate knowledge of the issuer and status in the company, could be in a superior position to challenge management and Board decisions in upholding their independence.
- Independence is not just about how closely one is connected with another person, it is a "mindset" and how one sees their role as an "independent" board member. The independence of a board member depends very much on their integrity and professionalism. In our view, the integrity and status of a director is far more important a factor to determine their independence and suitability rather than their length of service on the board.
- Long-serving Directors, whether they are designated INEDs or otherwise, can play an important role in the company because of their experience, skills and institutional knowledge. The proposal has the effect of depriving a company of an important institutional asset.
- Hong Kong lacks a deep pool of well-qualified and experienced INEDs, and smaller companies may face even greater challenges in identifying and appointing suitable INEDs. It is stated in the Consultation Paper that there are approximately 1,500 long serving INEDs in Hong Kong that would need to be replaced if the new proposals are adopted. This would present serious challenges to both listed companies as a group as well as individual listed companies.
- Given the scarce supply of qualified INEDs in the market, the proposal would certainly add extra compliance costs for listed companies and may discourage companies looking for potential IPOs in Hong Kong. It may also

have adverse impact on the status of Hong Kong as an international financial centre.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

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?

No

Please provide reasons for your views.

While we firmly agree that diversity should be promoted, we do not support the current proposal as we believe that diversity can take many forms, not just

gender. Diversity also encompasses culture, race, religious beliefs, physical ability, sexual orientation, and many other factors.

We suggest that listed issuers consider each position on the basis of merits, skill, educational background, professional experience, and other relevant qualifications - not solely on the basis of gender, physical ability, religious belief, race or sexual orientation.

The goal should be to build diverse, qualified, and representative nomination committees and boards – not to impose quotas or target a specific demographic. We recommend focusing on creating an environment where the most skilled and experienced individuals can contribute, while also reflecting the diversity of the broader community.

From a practical viewpoint, the available pool of qualified female directors is very limited and it will take time for the pool to grow. This point is highlighted in the following extract from a report entitled “Missing Opportunities? – A Review of Gender Diversity on Hong Kong Boards” issued by The Hong Kong Institute of Chartered Secretaries in February 2021:

“In the financial services sector whilst over half of entry level positions are held by women, this figure drops substantially at higher levels. According to PwC and The Women’s Foundation, only 33% of senior management positions are occupied by females and this falls to 21% at board level. Data indicates that, rather than raising a family, lack of career progression and other career opportunities is the primary reason why women leave a financial services organisation.”

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.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

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?

Please provide reasons for your views.

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?

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?

Yes

Please provide reasons for your views.

We support the proposed requirement for specific disclosure of the issuer's dividend policy. However, we understand that it is necessary for authorised institutions like listed banks to notify their regulators of their intention to pay dividends and to seek regulators' views. Therefore, it is likely that the dividend policies of those institutions shall reflect that the dividend to be paid may be subject to regulators' views. It would be helpful if the HKEX could confirm whether such approach in drafting the dividend policy can fulfil the proposed disclosure requirements.

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.

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?

Please provide reasons for your views.