

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?

No

Please provide reasons for your views.

The HKEx's rationale for this proposal is that a Lead INED offers a clear point of contact for shareholders providing them with independent insight and facilitate communication. It should be noted that the current CG Code already requires mandatory disclosure on shareholders' communication policy so that shareholders may communicate their views to the issuer. Where a question is put forward to an issuer, the directors should decide whom among themselves would be more appropriate to answer the question. Every director has his/ her own expertise and a Lead INED could not possibly answer all questions.

The senior management and the executive directors are the ones that take part in the management and operation of an issuer. They are more familiar with most issues that concern the shareholders/ investors. If there is no conflict involved in a particular situation, shareholders do not have to resort to the INEDs. It is only where shareholders require independent views on certain issues concerning the company, such as approving connected transactions, the views of the INEDs become more relevant to the shareholders. In such circumstances, an issuer would have formed an Independent Board Committee comprising all the INEDs to give independent advice to the shareholders. Given the current available means and requirements, there is simply no need to designate a Lead INED.

In addition, the appointment of a Lead INED would increase the costs to an issuer in securing the appointment of an INED tasked with this additional task.

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.

It is the directors' own responsibility to equip themselves with the necessary skills, knowledge and competence to act in the best interests of the issuer. It is also the responsibility of the nomination committee to identify suitable candidates for the board to consider the nomination and appointment. Before formal appointment, LR3.09D already requires a potential director (whether INED or not) to obtain legal advice from Hong Kong solicitors as regards the requirements applicable to a director under the Listing Rules. In seeking such legal advice, the directors should be well-informed about their responsibilities under law and the Listing Rules. It is unthinkable that an issuer will appoint directors randomly without regard to his skills, knowledge and integrity. The law already provides that a director has a fiduciary duty towards the issuer and should act in the commercial best interest of the issuer. Current Code Provisions already require a director's participation in continuous professional development, which is more than sufficient for a director to refresh his knowledge on the latest regulatory developments.

The additional training would only benefit the providers of such training courses, such as the Hong Kong Institute of Directors etc., and increase the cost of maintaining listing on HKEx. Moreover, it is difficult to ensure the institutions/course providers to conduct their activities in a manner consistent with the standards as expected by the HKEx if such mandatory training courses are not required to be accredited by HKEx to demonstrate compliance with such standards.

As for the mandatory disclosure on director training, the HKEx has not identified similar rules in other reputable exchanges. Arguably, the proposed disclosure requires a high level of details which are totally unnecessary and not meaningful. Just as the HKEx has noted, professional bodies, e.g. HKICPA and the Law Society of Hong Kong, require members to complete certain hours of training in order to maintain their licenses. However, such professional bodies do not require members to publicly disclose the details of their training received. Such details are not of public interest and attach no importance to the directors when fulfilling their duties.

The HKEx has put forward the Singapore Stock Exchange and Malaysian Stock Exchange as examples in support of this proposal. However, there is no equivalent rules in the UK, Australia or the US and HKEx has acknowledged that its current rules are in line with the UK and Australia. As such, the rationale behind this proposal itself is not convincing. The proposed additional training and disclosure make HKEx a less attractive marketplace for issuers to list and deter highly qualified individuals to accept appointment as directors. HKEx should instead stick to its current practices to stay in line with the world reputable exchanges such as those in the UK and Australia.

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?

No

Please provide reasons for your views.

It is the directors' own responsibility to equip themselves with the necessary skills, knowledge and competence to act in the best interests of the issuer. It is also the responsibility of the nomination committee to identify suitable candidates for the board to consider the nomination and appointment. Before formal appointment, LR3.09D already requires a potential director (whether INED or not) to obtain legal advice from Hong Kong solicitors as regards the requirements applicable to a director under the Listing Rules. In seeking such legal advice, the directors should be well-informed about their responsibilities under law and the Listing Rules. It is unthinkable that an issuer will appoint directors randomly without regard to his skills, knowledge and integrity. The law already provides that a director has a fiduciary duty towards the issuer and should act in the commercial best interest of the issuer. Current Code Provisions already require a director's participation in continuous professional development, which is more than sufficient for a director to refresh his knowledge on the latest regulatory developments.

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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?

No

Please provide reasons for your views.

It should be noted that directors owe a fiduciary duty to an issuer and a duty to act in the best interests of the issuer. Whether or not there is any board performance review, a director cannot derogate from such duty. What matters most is that issuers have to identify and appoint competent individuals as directors.

At present, the Chairman's Statement and the Report of Directors in the annual reports already contain a lot of information about corporate governance, e.g. attendance of directors at meetings, disclosure of conflicts faced by directors etc.. What is the point of requiring board performance review? What value will this review add? Maintaining the current practice as a recommended best practice in the CG Code is sufficient.

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?

No

Please give reasons for your views.

Using a matrix to outline the skills of board members is not ideal. While the HKEx has put strong emphasis on diversity in this current consultation, a matrix, in contrast, requires issuers to classify and group the skills of directors together and draw up a diagram in the form of a matrix, which is not practicable. It is also noted the HKEx is only able to identify the Australian Stock Exchange as an example in putting forward this proposal. There is no other leading exchange in the world that has introduced the same. Is this code provision generally acceptable in the major international market?

To the layman, this proposal does not necessarily assist them in understanding the skills of each director. The existing practice among the issuers to disclose the skills and qualifications of individual directors separately in narrative form is already sufficient. A matrix only appears nice in form and does not add anything in substance.

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.

Among the INEDs of all listed issuers, the HKEx has only been able to identify 23 overboarding INEDs as of 31 December 2023. The phenomenon of overboarding is not common. Further, the HKEx has only identified the regulator in Mainland China which has imposed a restriction on overboarding. Therefore, such restriction is not typical among the world leading exchanges.

Directors are only appointed when they have been identified as suitable candidates by the nomination committee and appointed by the board/ the shareholders. Where an overboarding INED is considered to be suitable, the nomination committee as well as the full board must have their reasons behind it. HKEx should not interfere commercial decision of the issuer's board by way of this proposal. Moreover, individuals have different ability. If an individual has the confidence to sit on more than 6 boards and shoulder the corresponding risks and responsibility, let it be. In fact, an INED who sits on multiple boards in diverse industries accumulates valuable experience. This expertise enables them to act independently and contribute unique insights to the board, ultimately benefiting issuers.

The time commitment of INEDs for different issuers varies. Some larger issuers may require INEDs to devote more time but there are also smaller issuers which may not necessitate the same level of commitment. When an INED decides to sit on the boards of multiple issuers, he/ she must have considered his/ her capacity to fulfill his/ her commitments. It is the director's own responsibility to manage his/ her workload and decide whether he/ she is capable of taking up more directorships. An INED is in the best position to decide for himself whether he is overboarding or not. There is no role for HKEx to play on this issue. Thus, putting a hard cap on overboarding is absolutely not necessary.

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?

No

Please provide reasons for your views.

The suggested new mandatory disclosure to annually assess and disclose each director's time commitment to the board is not practical. Directors are not service providers like auditors or solicitors who charge on an hourly basis. It will be extremely difficult to quantify the directors' time spent on and involvement in telephone calls or discussions over a meal or reading meeting materials or other relevant materials. The HKEx has also not identified any other exchanges that has introduced an equivalent disclosure requirement.

Additionally, there is no linkage between the time commitment of a director and his/ her ability when serving the board. A competent director with high work efficiency may not need as much time as other directors when serving, and vice versa. This proposal will not improve corporate governance but will

only add additional burden and cost on the issuers and the INEDs, thus increasing the cost of listing in Hong Kong. This proposal should not be supported.

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.

The Exchange has put forward the Singapore Stock Exchange and the Malaysian Stock Exchange as examples of having a hard cap on INEDs' tenure. However, the size of their equity capital markets is not comparable to that of Hong Kong. In contrast, the regulators of the global leading markets, such as NASDAQ, NYSE, LSE, ASX and the Tokyo Stock Exchange, impose no such restriction on the tenure of directors, thus maintaining a high level of flexibility for their issuers. Just as the HKEx has acknowledged, the HKEx's current Code Provision is in conformity with our counterparts in the UK and Australia. Our rules already require explanation to the shareholders as to why an INED is still considered independent after 9-years of service. This current requirement is more than sufficient and effective already for shareholders to make well-informed decisions.

Further, the HKEx has not justified why it considered the tenure of 9 years as the best fit in the context of the Hong Kong market. The Malaysian Stock Exchange has, in fact, imposed a cap of 12 years instead. In proposing such a hard cap, why does the HKEx opt for the 9-year cap as imposed by the Singapore Stock Exchange but not the 12-year cap as adopted by the Malaysian Stock Exchange? It appears that this 9-year cap has been fixed quite randomly and arbitrarily.

Just as the HKEx has noted in the consultation paper, there are around 1,500 directorships held by Long-serving INEDs. It places a heavy burden on the issuers as they may have to compete with each other to identify and appoint competent individuals as new INEDs within the 3-year transition period. The expertise and skills of the current INEDs are invaluable to the issuers which would be hard to be replaced. Not to mention that securing talented individuals is highly challenging for issuers in Hong Kong, especially given the competitive market when appointing a talented INED with rich experience.

The HKEx has also failed to prove causation or any linkage between the length of time in serving the board and the degree of independence. It is submitted that as long as the INED is competent, he/ she should be allowed to maintain his/ her independence even after serving for over 9 years.

Whether a Long-serving INED could continue serving on the board should be dependent on his/ her ability and competence, and the tenure of directorship is irrelevant. This proposal will not only undermine HKEx's competitiveness compared to the world reputable stock markets, it will also cause chaos to the market (i.e. issuers being forced to appoint less qualified individuals as INEDs).

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.

The HKEx has always aimed to achieve gender diversity at the board level. The current LR13.92 in force requires issuers to appoint at least a director of a different gender on the board by 31 December 2024. Whether or not there is at least one director of a different gender on the nomination committee does not make significant difference. The HKEx should instead allow the board to decide who to sit on the nomination committee. The board is the most appropriate body to decide what is best for the issuer.

The HKEx has not explained the reason why it considered having a director of a different gender on the nomination committee is necessary. The HKEx has not given examples where directors of a particular gender tend not to nominate directors of a different gender. The current LR13.92 has already served the purpose of gender diversity at the board level so there is no need to implement this new code provision.

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)?

No

Please provide reasons for your views.

The gender distribution of an issuer's workforce may well depend on its business nature and the expertise/ skills required of its workforce. Not every issuer may be capable of codifying a diversity policy, particularly those small-to medium-sized issuers. The HKEx has proposed to require issuers to disclose "any plans or measurable objectives" on workforce diversity, a requirement with such a low threshold that would do very little to promote diversity. Again, the HKEx has simply stated its intention to foster gender diversity without justification. It has completely disregarded the business needs of different issuers to employ staff of a particular gender. Other reputable stock markets do not seem to have similar rules. The basis for this proposal is weak and it could potentially be alleged as unduly burdensome.

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?

No

Please provide reasons for your views.

The HKEx has indeed noted in its analysis that all the issuers have in place and have conducted an annual review of their board diversity policy. Even though it is currently not a mandatory disclosure requirement but only a Code Provision, the issuers are keen to disclose such policy in their CG Reports. Therefore, mandating an annual review of the board diversity policy is unnecessary.

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?

No

Please provide reasons for your views.

Paragraph 12 of the current Appendix D2 already requires issuers to disclose the brief biographic details of the senior management in the financial reports. The gender ratio is therefore very obvious from the reports and that there is no need for separate disclosure. It is worth noting that only the Australian market has required issuers to conduct separate disclosure, whereas the UK only requires disclosure of the gender identity of board and the executive management. Just as explained above, the HKEx has not put forward justification for this proposal. It should not over-do diversity in circumstances where it is not necessary. What matters most to issuers is the competence and ability of their employees, which has no correlation with their respective gender. As such, mandatory disclosure of separate gender ratio does not add anything to improve corporate governance.

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.

Codifying the existing's guidance would offer a higher degree of clarity on the arrangements and thus this proposal is supported.

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?

No

Please provide reasons for your views.

The HKEx has found that its current disclosure requirements are at par with most other world-leading exchanges. It has only identified the SGX which has a mandatory requirement on issuers to disclose a comment of the board on the adequacy and effectiveness of the issuer's RMIC with a statement from the audit committee. This HKEx's proposal is, again, weakening its competitiveness among its competitors.

The HKEx has cited that the SFC, the Accounting and Financial Reporting Council and the HKEx itself have noted disciplinary cases where a few issuers may have ineffective RMIC systems. However, the lack of detailed disclosure does not necessarily mean that the systems are ineffective. The HKEx has not established a causal relationship between the two. Further, tightened disclosure requirements do not mean effective operation of the systems. What matters most is the governance of the board which is not dependent on a disclosure requirement, but the board's integrity, honesty, ability and willingness in buttressing RMIC. This proposal does not address the root cause of the issue.

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?

No

Please provide reasons for your views.

The proposed mandatory disclosure does not differ much from the existing code provision as they both require issuers to explain the reasons for not having a dividend policy. The HKEx has in fact noted that almost all the sample Hong Kong issuers have complied with the current code provision. The proposal further mandates issuers to explain the reasons for not declaring any dividend or material variation in dividend rate. It is already a common practice among issuers in Hong Kong to explain briefly why dividend was not declared or the changes in dividend payout in their results announcements or financial reports. Preserving the existing code provision is already sufficient to encourage disclosure while at the same time providing flexibility to an issuer and there is no need to change it to a mandatory disclosure requirement.

Where the board decides not to declare any dividend, the proposal also requires the issuer to explain the measures to enhance investors' return (if any). Aside from dividend payout, the capital gain, driven by an increase in the share price, is the other type of return for investors. However, except in the case of a repurchase, movements in the share price are not entirely within the issuer's control. Save for financial performance as a factor, the share price is in fact affected by many other factors such as industry trends, economic indicators and interest rates which are beyond the issuer's control. This unrealistic requirement places additional and unnecessary burden on the issuer. Thus, this proposal is not supported.

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.