



新鴻基地產發展有限公司

Sun Hung Kai Properties Limited

14 August 2024

By Email ([response@hkex.com.hk](mailto:response@hkex.com.hk)) and by Hand

**Hong Kong Exchanges and Clearing Limited**

8/F, Two Exchange Square

8 Connaught Place, Central

Hong Kong

Dear Sirs,

**Consultation Paper 2024**

**Review of Corporate Governance Code and Related Listing Rules**

**The Consultation Paper**

1. We refer to the Consultation Paper on “*Review of Corporate Governance Code and Related Listing Rules*” published on 14 June 2024 and would respond to some of the proposals as follows.
2. Terms defined in the Consultation Paper shall have the same meanings when used in this letter, unless otherwise defined or the context otherwise requires.

**Objectives for introducing regulatory requirements**

3. We welcome HKEX’s efforts in promoting good corporate governance practice and reporting by issuers.
4. However, we must not lose sight of the overarching need and objective to maintain Hong Kong’s competitiveness as an international financial centre. In our submissions :-
  - (a) Regulatory requirements which HKEX seeks to impose must be practical and practicable, and not overly burdensome. Over regulation is to be avoided.
  - (b) Requirements adopted in other jurisdictions may be of value for reference, but should only be adopted by HKEX if and only if they will serve the purpose of enhancing Hong Kong’s competitiveness, and are suitable and appropriate for adaptation in Hong Kong, having regard to Hong Kong’s unique position as a Special Administrative Region of the People’s Republic of China with a high degree of autonomy<sup>1</sup>.

---

<sup>1</sup> Article 2 of the Basic Law.





新鴻基地產發展有限公司

Sun Hung Kai Properties Limited

- (c) In particular, what is regarded as a need to promote diversity and inclusion (including gender, age and ethnicity) :-
- (i) must not override Hong Kong's core value of meritocracy, so that appointments (whether as directors or board committee members) should always be merit based; and
  - (ii) must not result in reverse discrimination, such that a candidate who is better qualified is passed over for appointment in favour of a less qualified person, simply because of the need to fulfil a quota based on gender or ethnicity.

**Meritocracy is a core value**

5. Meritocracy is one of the most important pillars underpinning Hong Kong's position as an international financial centre. A gender quota system is the antithesis to our core value of meritocracy. There is and can be no suggestion that there is present in Hong Kong any discrimination against women in appointment to managerial positions, as witnessed by the many appointments of women to the most senior or highest positions, both in Government and in the private sector, as well as in academia. Gender-based affirmative action is not, and has never been, and should not become, part of our culture or jurisprudence.

**Unnecessary expansion of requirements on INEDs not in the interest of Hong Kong**

6. Investors look for an environment of simplicity, consistency, continuity, efficacy and predictability. Unnecessary changes to the rules run contrary to the legitimate expectations of investors and do not contribute to the continual success of Hong Kong as an international financial centre.
7. In our respectful submissions, HKEX should take care not to unnecessarily introduce new requirements for the appointment of INEDs, nor unnecessarily expand the gender quota system for directors and board committee members.

**Question 1 - Lead INED**

***HKEX's proposal***

8. It is proposed to introduce a new CP requiring issuers without an independent board chair to designate one INED as a Lead INED to enhance engagement with potential investors and shareholders (collectively "**stakeholders**").

***The new CP should not be introduced***

9. For the reasons given below, we do not consider that such a new CP should be introduced.





*HKEX's justifications for Lead INED*

10. Under this proposal, the primary responsibility of the Lead INED would be (i) to facilitate and strengthen communication: among INEDs; between INEDs and the rest of the board; and with shareholders<sup>2</sup>, and (ii) to attend the issuer's AGM and be responsible for answering queries from shareholders, though not solely responsible<sup>3</sup>. However, no Lead INED would need to be appointed if the issuer has an independent board chair because HKEX expects such a board chair to fulfil the role of the Lead INED<sup>4</sup>.

*Justifications at odds with HKEX's own position*

11. We find the justifications for the proposal unconvincing and at odds with the position taken by HKEX itself regarding the role of an INED :-
- (a) HKEX recognises that INEDs are not responsible for the day-to-day management of the company, and HKEX would not expect the Lead INED to discuss the issuer's results and operational matters with stakeholders<sup>5</sup>. However, it is almost inevitable that questions in relation to the issuer's day-to-day management, its results or operational matters would be directed by stakeholders to the Lead INED.
  - (b) HKEX also recognises that the Lead INED designation is not intended to create a separate or higher level of responsibility relative to other INEDs, and all directors would be subject to the same fiduciary duties and bear the same responsibilities in respect of the issuer<sup>6</sup>. Yet the role of Lead INED creates the perception, rightly or wrongly, that the Lead INED occupies a position higher than that of the other INEDs.
  - (c) Currently there is already a CP requirement for an issuer to disclose in its corporate governance report (i) its shareholders' communication policy, which should include channels for shareholders to communicate their views on various matters affecting the issuer, as well as steps taken to solicit and understand the views of stakeholders and (ii) a statement of the issuer's review of the implementation and effectiveness of the shareholders' communication policy conducted during the year<sup>7</sup>.
  - (d) Accordingly, there should have already been in place a proper channel of communication for stakeholders if they wish to communicate with the issuer, and an issuer is required to review and disclose the implementation and effectiveness of the communication policy.

<sup>2</sup> §26 of Consultation Paper.

<sup>3</sup> §31 of Consultation Paper.

<sup>4</sup> §25 of Consultation Paper.

<sup>5</sup> §29 of Consultation Paper.

<sup>6</sup> §28 of Consultation Paper.

<sup>7</sup> CP Part I Section L (Investor Relations) at AC1-9 of the CG Code.





*Lead INED is an unnecessary duplication and counter-productive*

12. The role of the Lead INED as a channel of communication for stakeholders is an unnecessary duplication, and would be counter-productive.
- (a) Where a proper channel of communication has been established, usually in the form of a corporate communication department headed by a corporate communication director or equivalent ("CCD"), inquiries, comments and complaints from stakeholders would first be directed to the CCD, who would then liaise with the relevant managers, committees or directors of the issuer for a proper response.
  - (b) If the Lead INED becomes the primary channel of communication for stakeholders, he or she will in effect have to assume responsibility for this particular aspect of day-to-day management and may even have to assume a role similar to that of the CCD, or simply perform the task of passing the communication to the CCD for action. This is at odds with the fact that INEDs are not responsible for the day-to-day management of the issuer.
  - (c) If the Lead INED were to become a separate or additional channel of communication, this would be a duplication and would cause confusion to those stakeholders who wish to communicate with the issuer. Given a choice, it is natural for a stakeholder to send his or her communication to the Lead INED, instead of the CCD, since the Lead INED occupies a higher position than the CCD. The unintended consequence is that the Lead INED will be inundated with letters and emails, which is counter-productive.
  - (d) In so far as communication (i) between INEDs and (ii) between INEDs and the rest of the board is concerned, the proper facilitator should be the company secretary, and there is no justification for imposing the burden on the particular INED named as the Lead INED. Besides, the CG Code already requires (i) the board of an issuer to meet regularly and that board meetings should be held at least four times a year at approximately quarterly intervals<sup>8</sup>; and (ii) the chairman should at least annually hold meetings with the INEDs without the presence of the other directors<sup>9</sup>. The current requirements already provide sufficient channels for INEDs to communicate between themselves and with other board members.
  - (e) On attendance at the AGM, and the answering of queries from shareholders, all the directors are expected to attend, unless there are justifiable reasons for not attending, and the directors should, each according to his or her role within the issuer, share the responsibility of answering the relevant queries<sup>10</sup>. The suggestion (if we understand it correctly) that the Lead INED should be

<sup>8</sup> CP C.5.1.

<sup>9</sup> CP C.2.7.

<sup>10</sup> As pointed out in §31 of the Consultation Paper, issuers would be free to determine who, from its management or board, is best placed to answer queries from shareholders at an AGM.





responsible for answering queries from shareholders, though not solely responsible<sup>11</sup>, is at odds with HKEX's position that the Lead INED designation is not intended to create a separate or higher level of responsibility relative to other INEDs<sup>12</sup>.

***Proposal premature***

13. We would observe that the Consultation Paper did not clearly spell out the exact expected role and function of the Lead INED, and it is said that "*Further guidance will be provided on the expected role and functions of a Lead INED*"<sup>13</sup>. Absent full details of the expected role and function of the Lead INED and full consultation after such details have been published, it is premature for HKEX to implement the proposal.

***Proposal presents disincentives to prospective INEDs***

14. The market is keenly aware of the very limited pool of eligible and available candidates for appointment as INEDs. The additional duties and obligations required of a Lead INED act as disincentives to prospective INEDs.

***What if no INED is willing to take up the role of Lead INED***

15. The Consultation Paper is silent on the situation where none of the INEDs are willing to take up the role of Lead INED, and it is unclear whether this will constitute a "Considered Reason and Explanation"<sup>14</sup> acceptable to HKEX for justifying deviation from this proposed CP.

***Major jurisdictions do not have similar requirement***

16. It is noted that other jurisdictions including the United Kingdom, Singapore and Australia have adopted and promoted the concept of a Lead INED on a voluntary or "comply or explain", basis<sup>15</sup>. Notably, the Consultation Paper does not say that other major jurisdictions such as the United States or Mainland China have a similar requirement.

***Summary***

17. In our submissions, the Lead INED proposal (i) does not add value to better corporate governance, (ii) is an unnecessary duplication and (iii) is counter-productive. In any event, absent full details of the expected role and function of the Lead INED and full consultation after such details have been published, it is premature for HKEX to implement the proposal.

---

<sup>11</sup> §31 of Consultation Paper.

<sup>12</sup> §28 of Consultation Paper.

<sup>13</sup> §27 of Consultation Paper.

<sup>14</sup> Part 2 §2(a) of the Introduction to the CG Code.

<sup>15</sup> §23 of Consultation Paper.





**Question 8 – Hard cap of 9 years on tenure of INEDs**

***HKEX's proposal***

18. It is proposed 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. It is suggested that :-
- (a) The proposed hard cap strengthens board independence.
  - (b) That a person can be re-considered as an INED of the same issuer after a two-year cooling-off period.
  - (c) There be a three-year transition period for implementation of the hard cap.

***Hard cap should not be introduced***

19. We do not agree that a hard cap should be introduced.

***Current requirements***

20. The current requirements are that the further appointment of a Long Serving INED should be subject to a separate shareholders' resolution, which states the reasons why the board (or the nomination committee) believes that the director is still independent and should be re-elected. Further, an issuer whose INEDs are all Long Serving INEDs should (i) disclose the length of tenure of each Long Serving INED in its circular to shareholders and/or explanatory statement accompanying the notice of the AGM; and (ii) appoint a new INED at the forthcoming AGM<sup>16</sup>. The nomination committee is also required under the CG Code and its terms of reference to assess the independence of the INEDs<sup>17</sup>.

***Deemed non-independent is a wrong approach***

21. The suggestion is that an INED who serves 9 years or more should, in effect, be *deemed* non-independent<sup>18</sup>. This, with respect, is not the correct approach. Whether an INED is or is not independent is a question of fact, to be determined objectively having regard to clearly defined factors<sup>19</sup>. In addition, in respect of a Long Serving INED, a separate shareholders' resolution is required to confirm the belief of the board (or the nomination committee) of the director's independence<sup>20</sup>.

***Wrong in principle to create irrebuttable presumption of non-independence***

22. In order that a Long Serving INED may be regarded as non-independent, there should exist facts or factors which would tend to show that the director is no longer independent or which, under the Listing Rules, HKEX would take into account in questioning the

---

<sup>16</sup> §96-97 of Consultation Paper.

<sup>17</sup> CP B.3.1(c).

<sup>18</sup> §104 of Consultation Paper.

<sup>19</sup> MB Rule 3.13 which sets out the relevant factors to be taken into account for assessing independence.

<sup>20</sup> CP B.2.3.





independence of the director<sup>21</sup>. To impose what is in effect an irrebuttable presumption of non-independence by reason only of service as an INED for nine years is wrong in principle, just as presumption of guilt, unless there are very good reasons for the presumption.

23. The Consultation Paper states that the tenure of non-executive director is an area of focus for institutional investors who have stated that serving more than nine years is *relevant* to their determination of a non-executive director's independence<sup>22</sup>. But it does not follow that a factor which is relevant should always be regarded as, or be elevated to, the only basis of an *irrebuttable presumption*.

*Reliance on Monetary Authority's guidance misconceived*

24. The Consultation Paper relies on the Hong Kong Monetary Authority's guidance titled "*Empowerment of INED in the Banking Industry in Hong Kong*" issued in December 2016<sup>23</sup> ("**MA Guidance**") and says that the MA Guidance *questions* the independence of an INED if he or she has served on the board for more than nine years<sup>24</sup>. However, all that the MA Guidance says, in §15(h), is that service on the board for more than nine years is *one of the factors* that should be considered in assessing the independence of a director. The MA Guidance provides no support for the proposal that a director who has served for more than nine years should be deemed non-independent.

*Reliance on Government policy misplaced*

25. The Consultation Paper also relies on the Government policy of not appointing non-official members to serve for more than six years as members of advisory and statutory bodies<sup>25</sup>. Such reliance is, with respect, misplaced. The Government policy is directed at advisory and statutory bodies, not listed companies. The reason for the "six-year" rule is "*to ensure that members of the public have equal opportunities to participate in public affairs through services on these bodies*"<sup>26</sup>. The six-year rule has no relevance to the issue of the tenure of INEDs of listed companies.

*United Kingdom and Australia regimes do not provide for irrebuttable presumption*

26. The Consultation Paper further relies on the fact that regulators in the United Kingdom and Australia recognise in their corporate governance codes that a director's lengthy tenure on the board *could* impair (or *appear* to impair) their independence<sup>27</sup>. But that is a far cry from saying that service for nine years or more creates an *irrebuttable presumption* of non-independence. In essence there is no material difference in this

<sup>21</sup> MB Rule 3.13.

<sup>22</sup> §99 of Consultation Paper.

<sup>23</sup> See <https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2016/20161214e1.pdf>.

<sup>24</sup> §102 of Consultation Paper.

<sup>25</sup> §102 of Consultation Paper.

<sup>26</sup> See Home and Youth Affairs Bureau "*Principles of Appointments to Advisory and Statutory Bodies*" at [https://www.hyab.gov.hk/en/policy\\_responsibilities/District\\_Community\\_and\\_Public\\_Relations/advisory.htm](https://www.hyab.gov.hk/en/policy_responsibilities/District_Community_and_Public_Relations/advisory.htm).

<sup>27</sup> §103 of Consultation Paper.





新鴻基地產發展有限公司

Sun Hung Kai Properties Limited

respect between the regimes in the United Kingdom and Australia and the current regime in Hong Kong.

***No reason to rely on regimes in Singapore and Malaysia, instead of United Kingdom and United States***

27. The Consultation Paper in addition relies on that the fact that regulators in Singapore and Malaysia introduced tenure limits for INEDs in January 2023 and January 2022 respectively<sup>28</sup>. However, there is no suggestion that regulators in the United Kingdom or those in the United States have imposed limits on the tenure of INEDs, and no reason has been provided as to why HKEX should follow the regimes in Singapore and Malaysia, instead of those in the leading international financial centres of the United Kingdom and the United States.

***No convincing justifications for proposal***

28. In our respectful submissions, there are no convincing justifications for imposing limits on the tenure of INEDs in Hong Kong. The current requirements that the board (or the nomination committee) must be satisfied with the independence of the INED, and that the shareholders must pass a separate resolution to endorse the belief of the board (or the nomination committee) provide adequate protection for stakeholders<sup>29</sup>.

***Limited pool of qualified INEDs and practicality***

29. As a matter of practicality, within each sector of issuers there is a very limited pool of eligible and available candidates with the necessary qualifications and experience for appointment as INEDs, bearing in mind the following :-
- (a) It is imperative that the candidate must be independent in compliance with the requirements laid down by HKEX<sup>30</sup>.
  - (b) The candidate must have the necessary qualifications, skills and experience to serve as an INED.
  - (c) The candidate must have the necessary stature and respect that are commensurate with the position for appointment.
  - (d) Qualified and available candidates are usually very busy people. This, together with the rule on Overboarding INEDs, places constraints on the number of available potential candidates.
  - (e) The business of an issuer may be very specialised requiring an in depth understanding by the INED of the business and the culture of the issuer; or the business of the issuer may be very diverse, requiring not only depth but also

<sup>28</sup> §103 of Consultation Paper.

<sup>29</sup> §96 and 97 of Consultation Paper.

<sup>30</sup> MB Rules 3.13.





新鴻基地產發展有限公司

Sun Hung Kai Properties Limited

breadth of such understanding. Such special understanding can only be acquired by experience through long service with the issuer.

*Lamentable loss of human resources if proposal implemented*

30. The imposition of limits on the tenure of INEDs will result in a lamentable loss of valuable human resources and further limit the pool of available potential candidates.

**Question 10 - At least one director of a different gender on nomination committee**

*HKEX's proposal*

31. It is proposed to introduce a new CP requiring issuers to have at least one director of a different gender on the nomination committee.

*Proposal contrary to Hong Kong's core value of meritocracy*

32. For the reasons given in paragraphs 4 to 6 above, we do not agree with this proposal. We would like to emphasise that meritocracy is one of the most important pillars underpinning Hong Kong's position as an international financial centre. A gender quota system is the antithesis to our core value of meritocracy. There is and can be no suggestion that there is present in Hong Kong any discrimination against women, as witnessed by the many appointments of women to the most senior or top decision-making positions, both in Government and in the private sector, as well as in academia. Gender-based affirmative action is not, and has never been, and should not become, part of our culture or jurisprudence.

**Questions 11 to 14 - Diversity policy**

33. For the same reasons given in response to Question 10, we do not agree with these proposals.

Yours faithfully,  
For and on behalf of  
Sun Hung Kai Properties Limited

