

**Response to the HKEX Consultation Paper on
Review of Corporate Governance Code and Related Listing Rules**

Lead Organizing Unit

PROFESSIONAL INVESTOR ASSOCIATION

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We are pleased to submit our response to the HKEX regarding the consultation paper on the Review of the Corporate Governance Code and Related Listing Rules, issued on 14 June 2024.

(A) Board effectiveness

I. Designation of lead INED

Question 1:

Do you agree with our proposal to introduce a new CP requiring issuers without an independent board chair to designate one INED as a Lead INED to enhance engagement with investors and shareholders? Please provide reasons for your views.

Our response:

We are supportive of this proposal for the following key reasons:

The Lead INED can serve as a clear and independent point of contact for both potential and existing shareholders. In this capacity, the Lead INED can provide investors with valuable insights regarding the issuer's corporate governance practices. By acting as a communication conduit between investors, shareholders and the issuers, the Lead INED can bolster the listed companies' transparency and accountability. This, in turn, can foster more meaningful and constructive dialogue between the issuer and its investors.

II. Mandatory director training

Question 2: Regarding continuous professional development for directors, do you agree with our proposals to:

(a) Make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours?

(b) Require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment?

(c) 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?

(d) Specify the specific topics that must be covered under the continuous professional development requirement?

Please provide reasons for your views

Our response:

(a) We are supportive of the proposal to make continuous professional development mandatory for all existing directors without specifying a minimum number of training hours. This approach allows for greater flexibility and ensures that directors can stay up-to-date on the market information. By not mandating a rigid hour requirement, the proposal recognizes the diverse levels of experience and knowledge among directors, enabling them to tailor their learning and development needs accordingly.

(b) We concur with the proposal to require first-time directors to complete a minimum of 24 hours of training within 18 months following their appointment. Providing a structured training requirement can effectively equip these directors with the necessary knowledge and skills to fulfill their duties. The specified training hours and timeline strike a reasonable balance, allowing directors sufficient time to complete the training while also ensuring they are prepared to perform their responsibilities in a timely manner.

(c) We agree with the proposed definition of "First-time Directors," which appropriately captures both newly appointed directors and those who have been absent from serving on the boards of listed companies for an extended period of three years or more. This classification ensures that all such directors undergo the requisite training, regardless of their prior experience.

(d) We believe that specifying the core topics to be covered under the continuous professional development requirement is a positive step. This will help ensure that directors are equipped with the key knowledge that the Exchange deems essential, while still allowing for flexibility in their individual learning and development.

In summary, we are broadly supportive of the proposals outlined in the consultation paper regarding continuous professional development for directors. These measures will undoubtedly enhance the overall quality of corporate governance and bolster investor confidence

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.

Our response:

We agree with the proposed changes to Principle C.1 and CP C.1.1 of the CG Code. These changes will allow investors to have more transparency into the topics covered by the directors' continuous professional development training. By requiring issuers to disclose the hours, format, topics, and the name of the training provider, it will provide the public with a better understanding of the training undertaken by the directors. This increased level of disclosure will enhance transparency and enable investors to make more informed assessments of the directors' qualifications and preparedness to fulfill their roles. We believe these changes are a positive step towards strengthening corporate governance practices and aligning with investor expectations.

III. Board performance review

Question 4

Do you agree with our proposal to upgrade the current RBP 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.

Our response:

We are supportive of the proposal to require issuers to conduct a board performance review at least every two years. We believe this is an important governance practice that can help enhance the overall effectiveness of the board.

Rather than assessing the performance of individual directors, we agree that the focus of the review should be on the board's performance as a whole. This holistic approach allows the board to identify areas for improvement in its composition, diversity, members' qualifications and skills, as well as the board's ability to work together effectively to achieve the issuer's objectives.

We welcome the proposal to provide further guidance on the specific areas to be covered in the board performance review. This will help to establish a consistent framework and ensure that issuers focus on the key aspects that contribute to board effectiveness.

IV. Board skills matrix

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 provide reasons for your views.

Our response:

We fully endorse the proposal to introduce a new requirement for issuers to maintain and disclose a board skills matrix. We believe this is a valuable addition to the CG Code that will promote greater transparency and better enable investors to assess the composition and capabilities of the board.

The disclosure of the existing skills mix of the board will provide important insights into the collective expertise and experience that the directors collectively possess. Furthermore, the requirement for issuers to explain how this combination of skills, experience, and diversity can be benefited to the Company.

Additionally, we support the proposal for issuers to provide details and articulate their plans to acquire further skills, whether through the appointment of new directors or the professional development of existing board members. This forward-looking approach signals the board's commitment to continuously enhancing its capabilities to effectively guide the company in navigating evolving business challenges and seizing emerging opportunities.

V. Over boarding INED and directors' time commitment

Question 6

In relation to our proposal to introduce a "hard cap" of six listed issuer directorships that INEDs may hold, do you agree:

- (a) With the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers?
- (b) With the proposed three-year transition period to implement the hard cap?

Our response:

Instead of imposing a stringent restriction of six listed issuer directorships for INED, we propose an alternative approach to adopt a "comply or explain" framework.

Within this proposed framework, issuers would be mandated to elucidate in their annual reports the rationale behind their belief that an INED with more than six directorships possesses the necessary time and capability to fulfill their duties effectively. This framework underscores transparency and accountability while allowing for a nuanced assessment of the individual circumstances surrounding each director's commitments.

By embracing a "comply or explain" model, issuers would be prompted to furnish comprehensive justifications for the capacity of INED overseeing multiple directorships to discharge their obligations competently. This mechanism not only advocates for transparency but also permits issuers to showcase how these directors can adeptly manage their responsibilities across various boards without compromising their efficacy.

Question 7

Do you agree with the proposal to introduce a new MDR 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.

Our response:

We endorse the proposal to mandate that the nomination committee of listed issuers annually assess and publicly disclose its evaluation of each director's time commitment and contribution to the board. This enhanced accountability measure will undoubtedly strengthen the corporate governance framework and promote greater transparency around board effectiveness.

The requirement for the nomination committee to rigorously review each director's professional qualifications, work experience, listed company directorships, and other significant external commitments will enable a more informed and holistic assessment of their ability to devote sufficient attention and resources to their role.

(B) Independence of INEDs

Question 8

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:

(a) With the proposed hard cap to strengthen 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) With the proposed three-year transition period in respect of the implementation of the hard cap?

Our response:

Instead of introducing a "hard cap" of nine years on the tenure of INEDs, we advocate for the adoption of a "comply or explain" approach. This alternative approach would entail requiring issuers to disclose in their annual reports the justification behind the continued independence of INEDs serving beyond the stipulated nine-year threshold.

By embracing the "comply or explain" principle, issuers would be compelled to offer transparent explanations in support of the independence of long-serving INEDs, grounded in their unique competencies, individual circumstances, and unwavering dedication to fulfilling their duty with efficacy.

This proposed mechanism not only champions transparency but also empowers issuers to rationalize the independence of INEDs who have surpassed the recommended tenure limit, thereby striking a delicate equilibrium between governance oversight and the preservation of invaluable institutional knowledge and expertise within the boardroom.

We believe that the adoption of a "comply or explain" framework would better cater to the interests of all stakeholders by fostering a culture of answerability and informed decision-making within the corporate governance sphere.

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.

Our response:

We are in agreement with the proposal to require all listed issuers to disclose the length of tenure of each director in their CG Report. This measure will enhance transparency and empower investors to make more informed assessments about the board's composition and the independence of the INEDs.

Investors have a legitimate right to access this critical information, as the tenure of directors can provide valuable insights into their level of familiarity with the company, potential conflicts of interest, and ability to offer objective and independent oversight. By mandating the disclosure of each director's tenure, the Exchange is taking a commendable step to provide investors with a crucial data point to evaluate the suitability and independence of the board.

Furthermore, the disclosure of director tenure will also shed light on the work experience and institutional knowledge of the directors. Investors can utilize this information to better understand the continuity and stability of the company's leadership.

In summary, we support the proposed requirement for listed issuers to disclose the length of tenure of their directors. This transparency measure will undoubtedly enhance investor confidence and contribute to strengthening the corporate governance framework in Hong Kong's capital markets.

(C) Board and workforce diversity

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.

Our response:

We are supportive of the proposal to introduce a CP requirement for listed issuers to have at least one director of a different gender on their nomination committee. This measure aligns with global best practices and underscores the Exchange's commitment to promoting gender diversity and equality.

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.

Our response:

We are in favor of the Exchange's proposal to introduce a Listing Rule mandating that all listed issuers establish and publicly disclose a comprehensive diversity policy for their workforce, including senior management personnel. This forward-looking policy change aligns seamlessly with globally recognized best practices and underscores the Exchange's unwavering commitment to promoting diversity, equity, and inclusion.

By requiring the formalization and transparent communication of diversity commitments, the Exchange is taking a commendable step to ensure that listed companies are proactively addressing issues of equal opportunity, and inclusive talent management practices.

In conclusion, we unequivocally endorse the Exchange's proposal to introduce a Listing Rule mandating the disclosure of workforce diversity policies. This measure will undoubtedly contribute to the creation of a more equitable, inclusive, and innovative business environment in Hong Kong, to the profound benefit of both listed companies and their diverse stakeholder.

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.

Our response:

We 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. This change is a positive step forward as it will help to clarify and reinforce the relevant requirements for listed companies.

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.

Our response:

We endorse the Exchange's proposal to revise the MDR to mandate the separate disclosure of gender ratios for (i) senior management and (ii) the workforce, excluding senior management, in the CG Report.

This enhanced transparency will provide investors with invaluable insights into the gender composition across different levels of a listed company's workforce. By disaggregating the gender ratio data, the Exchange is empowering investors to conduct more nuanced analyses, enabling them to identify companies that have successfully implemented comprehensive diversity and inclusion strategies.

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 MB Rule 13.92(2) in Appendix I? Please provide reasons for your views.

Our response:

We are in alignment with the 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 MB Rule 13.92(2) in Appendix I.

Investors have a rightful expectation to be informed in a timely manner of any lapses in a company's compliance with the gender diversity requirement. Furthermore, the three-month window provided for the issuer to re-establish gender diversity on the board is a reasonable and pragmatic approach. It balances the need for prompt action with the practical realities that companies may face in identifying and onboarding suitable candidates.

(D) Risk management and internal control

Question 15

Do you agree with our proposal to:

(a) emphasize 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; and

(b) 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.

Our response:

We concur with the Exchange's proposal to:

(a) Emphasize in Principle D.2 the board's responsibility for the issuer's risk management and internal control systems, as well as the requirement to conduct, at minimum, annual reviews of the effectiveness of these critical frameworks. This added emphasis serves as a vital reminder to directors of their fiduciary duties in overseeing these functions.

(b) Elevate the requirement to conduct, at minimum, annual reviews of the effectiveness of the issuer's risk management and internal control systems to a mandatory obligation, and further mandate the disclosures set out in the MDR paragraph H. This enhanced policy measure is unequivocally commendable, as it ensures that all listed companies will, at the very least, rigorously evaluate the efficacy of their risk management and internal control frameworks on an annual basis.

Regular and comprehensive assessments of these systems are indispensable to safeguarding the long-term integrity of a company's operations. The proposed upgrades to the CG Code will effectively enshrine this best practice as a fundamental obligation, rather than a mere recommendation.

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.

Our response:

We are in accord with the proposal to refine the existing CPs in section D.2 of the CG Code.

This refinement will provide a clear and comprehensive guideline on the parameters of the requisite annual review process. By stipulating the minimum scope for these assessments, the Exchange is ensuring a consistent and thorough approach across all listed companies.

(E) Dividends

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.

Our response:

We are in agreement with the proposal to introduce a new MDR mandating the disclosure of the issuer's policy on the payment of dividends, as well as the board's dividend decisions made during the reporting period. This addition is commendable for the following reasons:

Firstly, the dividend policy is a crucial piece of information that investors keenly seek when evaluating a company. By requiring the disclosure of the issuer's dividend policy, the Exchange will be empowering investors to better understand the aims and objectives that underpin the company's approach to distributing profits.

Secondly, the proposed MDR will mandate the disclosure of the key factors considered by the board when determining whether to declare, recommend or pay any dividends. This information is invaluable for investors, as it will enable them to evaluate the board's decision-making process and the rationale behind the dividend decisions.

(F) Other minor Rule amendments

I. Requirement for issuers to set a record date

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

Our response:

We are in agreement with the proposal to introduce a Listing Rule requirement mandating that issuers set a record date to determine the identity of security holders eligible to attend and vote at a general meeting or to receive entitlements.

This measure will provide clarity to security holders and the broader market regarding the specific timeline for determining eligibility to participate in relevant corporate events. By establishing a clear and unambiguous record date, it eliminated potential ambiguity or disputes that may arise in the future.

II. Disclosure on modified auditors' opinion

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.

Our response:

We are in agreement with the proposal to codify the recommended disclosures regarding issuers' modified auditors' opinions into the Listing Rules. This change is commendable for the following reasons:

Firstly, it is of paramount importance to ensure that investors are informed when an issuer's auditors have issued a modified opinion. By transitioning these recommended disclosures into a mandatory Listing Rule requirement, the Exchange is solidifying the importance of this information and eliminating any potential ambiguity or inconsistency in its reporting.

Secondly, the proposed codification aligns with the fact that these recommended disclosures have been in place for several years and have generally been adopted by issuers. Given the widespread acceptance and implementation of these guidelines, the transition to a mandatory Listing Rule requirement is unlikely to pose a significant burden on issuers. Instead, it will serve to cement the standard practice and ensure a consistent, transparent approach across all listed companies in Hong Kong.

III. Financial information

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.

Our response:

We are in agreement with the proposal to clarify the Exchange's expectation regarding the provision of monthly updates in the CG Code provision D.1.2 and the note thereto. This clarification is a welcome step, as it reinforces the importance of directors having access to timely and comprehensive information to effectively fulfill their duties.

The directors of a listed company are entrusted with the responsibility of overseeing the management and operations of the organization. To discharge this duty diligently, they must be provided with relevant and up-to-date information on a regular basis. The provision of monthly updates by management is a critical component of this information flow, as it enables directors to remain informed and make well-informed decisions.

IV. Align nomination committee requirements with existing audit committee and remuneration committee requirements

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.

Our response:

We are in agreement with the Exchange's proposal to align the requirements for the nomination committee, audit committee, and remuneration committee regarding the establishment of written terms of reference and the arrangements during temporary deviations from the requirements, as outlined in the draft Main Board Listing Rule revisions.

These three board committees play a crucial role in ensuring the effective oversight and governance of a listed company. By aligning the requirements across these mandatory committees, the Exchange is promoting a consistent and holistic approach to corporate governance best practices.

Part II: Implementation dates and transitional arrangements

Question 22

Do you agree with the proposed implementation date of financial years commencing on or after 1 January 2025, with transitional arrangements 151 as set out in paragraphs 182 to 183 of the Consultation Paper? Please provide reasons for your views.

Our response:

We are in agreement with the proposed implementation date of the financial years commencing on or after January 1, 2025 for the upcoming changes to the Listing Rules and CG Code. This implementation timeline is both reasonable and necessary, given the scope and impact of the revisions on Hong Kong's listed companies and the investors.

The proposed amendments will introduce several significant changes that will affect a wide range of stakeholders. These changes will require careful study, planning, and implementation by the affected parties to ensure a smooth transition and compliance with the new requirements.

By setting the implementation date to the financial years commencing on or after January 1, 2025, the Exchange is providing listed companies with sufficient time to familiarize themselves with the revised rules, make the necessary adjustments to their internal policies and procedures, and put in place the appropriate governance structures and practices.

DEFINITIONS

Term	Definition
“CG Code” or “Appendix C1”	Corporate Governance Code as set out in Appendix C1 to the Main Board Listing Rules and Appendix C1 to the GEM Listing Rules;
CG Report	Corporate Governance Report under the CG Code
CP(s)	Code Provisions under the CG Code;
The Exchange	Hong Kong Exchanges and Clearing Limited
Listing Rules or Rule	Main Board Listing Rules and GEM Listing Rule
MDR(s)	Mandatory Disclosure Requirements under the CG Code
RMIC systems	risk management and internal control systems
INED	Independent non-executive director