

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?

No

Please provide reasons for your views.

Preamble

We note and strongly agree with the Hong Kong Government's recent calls to strengthen the economy and reinvigorate its markets. However, we are extremely concerned that the Consultation Paper's proposals will increase the regulatory burden on listed companies and disincentivise both potential applicants from listing in Hong Kong and existing listed companies from retaining their Hong Kong listings. This does not appear conducive to the goal of reinvigorating Hong Kong's markets or strengthening its economy. We also take issue with the premise that "improvements" in corporate governance that, in reality, add little or nothing to actual governance but rather add more work, greater costs and more bureaucracy for listed companies, will encourage investment in the Hong Kong market. The HSI is already trading at close to multi-year valuation lows and The Stock Exchange of Hong Kong Limited ("the HK Exchange") has fallen from the world's largest market for IPO fund raisings in 2019 (Note 1) with IPO funds raised of HK\$312.9 billion (Note 2) to rank joint eighth (with Germany and South Korea) in the first half of 2024 ("H1 2024") (Note 3) with IPO funds raised of just HK\$13.2 billion. Moreover, fourteen Hong Kong-listed companies announced their intention to delist in H1 2024 (Note 4), with one completed delisting valued at HK\$8.5 billion (Note 5), which is more than half of the combined value of the 30 IPOs on the HK Exchange in H1 2024. The slowdown in IPO activity in Hong Kong and Mainland China stands in stark contrast to the recovery in the European IPO market, where H1 2024 IPO proceeds quadrupled year-on-year (Note 6), and in the United States ("US") IPO market where H1 2024 IPO proceeds almost doubled those for the same period of 2023 (Note 7). Growth in IPO activity

has been particularly robust in India with H1 2024 IPO funds raised of US\$4.1 billion, more than double the IPO funds raised in the same period of 2023 (Note 8). It is unlikely that the solution to the HK Exchange regaining its position is to increase the regulatory burden on listed companies, but rather lies in making Hong Kong a more friendly and competitive place to do business and creating regulations which will encourage companies to list and remain listed in Hong Kong.

Generally, we are of the view that effective corporate governance of listed companies is one of the factors crucial to the overall long-term performance of a market. However, there are a number of other factors of great importance to markets and to particular companies. A cost-benefit analysis in uncertain economic times of imposing additional requirements which increase costs and the administrative burden on listed companies must be considered. In other highly successful markets, for example the NYSE and the NASDAQ, there is a general tendency (with exceptions) for corporate governance measures such as those covered in the Consultation Paper to be determined by the listed companies themselves. Larger listed companies generally tend to have more elaborate corporate governance structures, mechanisms and policies in place, partly because these are effective for a larger organisation and partly due to stakeholder, including investor (particularly institutional investor) pressure.

In our view, it is important to take a balanced approach to the corporate governance of companies listed on the Main Board or the GEM of HK Exchange (“ListCos”) in the context of the industry, size and stage of development of particular ListCos.

Highly prescriptive corporate governance structures with a “one size fits all” approach to large and small ListCos in diverse industries do not demonstrably increase value for stakeholders and is not the approach adopted in what are currently the world’s most successful markets. We note that the London Stock Exchange, to deal with similar problems to those of the HK Exchange, namely low valuations and a dearth of IPOs, has recently announced a raft of measures to remove disincentives for companies to choose a United Kingdom (“UK”) listing and minimise impediments to growth once a company is listed. It is worth noting the Financial Conduct Authority’s comment that UK-listed companies “should not face unduly onerous burdens that increase costs, make them less competitive on the global stage or risk reducing shareholder value through opportunity cost” (Note 9). This would seem a far more

realistic approach than adding new rules, and increasing the already very heavy regulatory burden on Hong Kong ListCos.

Hong Kong faces a challenge to increase its attractiveness to companies seeking to list to regain its leading position as an IPO fund-raising platform, which has been severely impacted by a confluence of factors including the economic slowdown in Mainland China, which continues to account for the vast majority of Hong Kong IPOs, with Mainland enterprises accounting for 95% of IPO funds raised on the HK Exchange in H1 2024 (Note 10).

We note that whilst investors, and particularly institutional investors, will almost invariably advocate mandatory higher corporate governance requirements, the reality is that they typically make investment decisions based on the balance between risk and reward. The proposals appear to give considerable weight to the comments of a small number of institutional investors, who, when asked if more or less corporate governance is a good thing, will always answer “more” as it is at no cost to them, nor does it require any investment of their time and effort. Conversely, little weight seems to have been given to the concerns of listed companies who are being asked to shoulder higher and higher costs to accommodate the ever decreasing benefits of additional rules and regulations. Moreover, over-prescriptive and rigid corporate governance requirements do not demonstrably increase the overall attractiveness of a market to stakeholders as reflected in stock prices.

Comments have been made that the proposals are intended to enable Hong Kong to somehow “catch up” with other markets. This is simply untrue. Firstly, in its comparisons, the HK Exchange has not emphasised the requirements of the US stock exchanges, the world’s deepest and best valued major markets, where many of the proposals are not part of their rules. In addition, many of the HK Exchange’s proposals would impose mandatory rules on ListCos, whereas even in the comparator markets, the similar items are recommendations, or subject to comply or explain, not mandatory rules.

For some smaller growing companies, the HK Exchange’s existing requirements are already onerous, and our concern is that further obligations may, through the sheer extent of the formal requirements, lead to an over-emphasis on a “box-ticking” approach to corporate governance in an attempt to comply with the requirements. This could have the unintended consequence of impeding the focus of a smaller ListCo on embedding

optimum workable corporate governance practices which benefit all stakeholders in the longer-term.

Response to Question 1:

We generally disagree with the proposed requirement for ListCos to appoint a Lead INED since we are not sure what it intends to achieve, nor the problem it is trying to solve. We are not aware of concerns in the market that it is difficult for investors to communicate or raise concerns with ListCos. Many larger Listcos have established investor relations channels to communicate with investors, and shareholder issues or concerns can be escalated to higher levels of management via these channels. We are also not convinced of the need for a Lead INED to coordinate the INEDs as a group. All directors should participate in board meetings, and it is not conducive to the smooth operation of the board to create a potentially adversarial position unless there is a strong reason for doing so.

Although this proposal may provide a further additional communication channel between the investors and a ListCo, we are of the view that this would not materially enhance investor relations and are concerned that it would impose additional costs and a more onerous administrative process and structure. We also note that ListCos must ensure equal communication to all shareholders, especially in relation to inside information where, pursuant to Section 307C of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong), disclosures must be made to the public in an equal, timely and effective manner. We also note that under Code Provision C.1.6 of the current Corporate Governance Code (the "Current CG Code"), all Independent Non-executive Directors ("INEDs") and Non-executive Directors ("NEDs"), are already required to attend general meetings to understand the views of shareholders.

Apparent contradiction inherent in proposed Code Provision C.1.7

Proposed Code Provision C.1.7 will require a Listco to appoint a Lead INED in two situations: (i) where the board chair ("Chair") is not an INED; and (ii) where the same person is both the chief executive ("CEO") and the Chair. This would suggest that a Lead INED does not need to be appointed if the Listco's non-executive Chair is an INED.

However, the proposed Code Provision C.1.7 seems inconsistent with the wording of its Note, which states that:

“A chairman who is an independent non-executive director is expected to fulfil the role of the lead independent non-executive director set out above, unless another director has been appointed as the lead independent non-executive director”.

This appears to mean that a company must effectively have a Lead INED, even where its Chair is an INED, which does not appear to be consistent with the express wording of CP C.1.7.

For the reasons discussed below, we disagree with the proposal to require the appointment of a Lead INED in any situation.

Ambiguity as to a Lead INED's role

In relation to the role and responsibilities of a Lead INED, the Consultation Paper states that the primary responsibility of the Lead INED would be to facilitate and strengthen communication: between INEDs; between INEDs and the rest of the board; and with shareholders (Note 11). Under the Current CG Code, however, the Chair already has responsibilities to ensure effective communication between these parties. Code Provision C.2.7 requires that the Chair hold meetings with the INEDs at least annually, while Code Provision C.2.9 requires the Chair to ensure constructive relations between the executive and non-executive directors and that non-executive directors contribute effectively. Under Code Provision C.2.8, the Chair already bears responsibility for taking appropriate steps to ensure effective communication with shareholders and to transmit their views to the board as a whole. Other Code Provisions cover the Chair's responsibilities for: ensuring that directors receive adequate information (Code Provision C.2.3); providing leadership, ensuring the board's effectiveness and performance of its responsibilities, and including matters raised by the directors in the board agenda (Code Provision C.2.4); and encouraging directors to actively contribute and participate and voice any differing views (Code Provision C.2.6). These obligations apply whether the Chair is independent or not. It is therefore unclear what additional responsibilities would be imposed on the Lead INED and how the duties of a Chair who is not independent would differ from those of an independent Chair.

Lipton and Lorsch envisaged that:

- (i) the CEO/Chair should consult the Lead INED on: the selection of board committee members and chairpersons; the board's meeting agendas; the adequacy of information received by the directors; and the effectiveness of the board meeting process;
- (ii) the Lead INED should play a leading role in the INEDs' review of the CEO's performance; and
- (iii) if the INEDs were to face a crisis due to the CEO/Chair becoming incapacitated or a failure in the performance of senior management, they would have a designated leader in the Lead INED, which "could be key to their ability to act promptly if the need arose". (Note 12)

Since the additional duties to be imposed on a Lead INED by proposed Code Provision C.1.7 are already covered by a Chair's existing duties under the current CG Code (as detailed above), we thus question the justification for the appointment of a Lead INED as proposed by proposed Code Provision C.1.7.

We note that under the corporate governance rules of Australia, Singapore and the UK, a Lead INED is required on a "comply or explain" basis, and that the proposal follows the practice in the UK. However, in the UK, the shares of listed companies are generally much more widely held than is the case in many Hong Kong listed companies with fewer listed companies having majority shareholders. In a situation where shares are widely held, additional channels of communication may be more relevant. Whilst a number of companies listed on the NYSE and NASDAQ have Lead INEDs, this is largely as a result of their corporate governance decisions and institutional investor pressure. For example, the Vanguard Group, Inc's "Proxy Voting Policy for U.S. Portfolio Companies (2024)" states that it is in the interest of shareholders for a board to be led by an independent Chair or Lead INED to ensure board independence (Note 13).

It is worth noting that under the individual corporate governance guidelines adopted by various companies listed on the NYSE and NASDAQ and the sample Lead Independent Director Charter published by the U.S. Securities and Exchange Commission (Note 14), Lead INEDs are often separately appointed and their roles are clearly defined in their corporate governance guidelines or lead independent director charter. Other than providing an additional channel of communication and reviewing the performance of the Chair, Lead INEDs are often responsible for calling and presiding over meetings of the INEDs, developing the agenda for INED meetings,

recommending the selection of the chairman of board committees and leading the board assessment process (Note 15). However, the appointment of a Lead INED is not a regulatory requirement for companies listed on the NYSE and NASDAQ.

As INEDs of a ListCo are not expected to participate in the ListCo's day-to-day operations, the Lead INED may not be in the position to provide accurate responses to the enquiries of investors on the ListCo's operations and, according to the Consultation Paper, this is not expected from Lead INEDs. The scope of the role and responsibilities of a Lead INED are unclear. Given the large degree of overlap between the roles of the Lead INED and the Chair under the current proposal, we are concerned that mixed messaging may be the unintended consequence of this additional channel of communication, particularly in ListCos with well-established investor relations programmes. We would therefore question whether there is any value-added advantage to investors by mandating a requirement for a Lead INED on every ListCo board.

Responsibility of the Lead INED and other INEDs

If the Lead INED is to have substantial additional duties, we are concerned that this may cause an imbalance of responsibilities among the INEDs. As a matter of Hong Kong law and the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("Listing Rules"), and as stated in the Consultation Paper (Note 16), the fiduciary duties imposed on all INEDs will remain the same. However, if additional duties are proposed for Lead INEDs, this will inevitably require them to devote more time and effort than other INEDs, as is recognised in the United States Council of Institutional Investors' "Policies on Corporate Governance" which set out the Lead INED's duties, followed by a statement that, "given these additional responsibilities, the lead independent director should expect to devote a greater amount of time to board service than the other directors" (Note 17). The requirement for Lead INEDs to spend more time than their fellow INEDs would likely result in higher compensation for the Lead INED which may prove to be an added burden, particularly for smaller ListCos.

The Hong Kong Institute of Directors has also expressed their concern that requiring ListCos to appoint a Lead INED risks upsetting the balance of INEDs' responsibilities, commenting that:

“Having a number of INEDs on a board helps to widen the opinion base and generate balanced views. The emphasis on the Lead INED risks disrupting this balance” (Note 18).

Given that in Hong Kong, the pool of potential INED candidates is already limited, it is possible that fewer qualified people would be open to taking up the additional responsibilities of a Lead INED, hence increasing the challenges for ListCos to appoint eligible and competent persons to fulfil the role of a Lead INED and lowering the potentially positive overall impact on ListCo boards that the HK Exchange expects to result from mandating a requirement for Lead INEDs.

In addition, in the light of the challenges and uncertainties facing many ListCos in the current economic climate, if the HK Exchange is minded to pursue this proposal, we strongly suggest that this should be a Recommended Best Practice (“RBP”) and not a Code Provision (“CP”).

Notes:

1. HKEX Annual Market Statistics 2019
2. HKEX Monthly Market Statistics June 2024
3. EY.(2024). EY Global IPO Trends Q2 2024, p. 48,
at:https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/ipo/ey-gl-ipo-trends-q2-v1-06-2024.pdf
4. Nikkei Asia. (July 2024). “Delistings outnumber IPOs by value in Hong Kong so far this year”, available
at:<https://asia.nikkei.com/Business/Markets/Delistings-outnumber-IPOs-by-value-in-Hong-Kong-so-far-this-year>
5. The delisting of SciClone Pharmaceuticals (Holdings) Limited
6. PWC. “Global IPO Watch H1 2024”, p.3,
at:<https://www.pwc.co.uk/risk/assets/pdf/ipo/global/global-ipo-watch-h1-2024.pdf>
7. Ibid., p. 5
8. Ibid., pp. 3 and 9
9. Financial Conduct Authority. (2023). “Consultation Paper CP23/31: Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed

proposals for listing rules reforms”, paragraph 2.18, at:
<https://www.fca.org.uk/publication/consultation/cp23-31.pdf>

10. EY. (June 2024). “EY Global IPO Trends Q2 2024”, p. 28 at:
https://www.ey.com/en_gl/insights/ipo/trends
11. Consultation Paper at paragraph 26
12. Lipton M. and Lorsch J.W. (1992). “A Modest Proposal for Improved Corporate Governance”. *Business Lawyer*, 48(1), p 59-77 at p 70.
13. Vanguard Group, Inc. “Proxy Voting Policy for U.S. Portfolio Companies”. (2024)at
<https://corporate.vanguard.com/content/corporatesite/us/en/corp/how-we-advocate/investment-stewardship/reports-and-policies.html>
14. US Securities and Exchange Commission. “Lead Independent Director Charter”at:https://www.sec.gov/Archives/edgar/data/1726711/000121390021033346/ea142958ex99-2_aditx.htm
15. Examples of Lead INEDs’ roles are given in the SEC’s Lead Independent Director Charter (see footnote 3 above), the corporate governance guidelines of NYSE-listed Eli Lilly and Company at:<https://investor.lilly.com/>, and the corporate governance guidelines of NASDAQ- listed Microsoft Corporation, available at:<https://www.microsoft.com/en-us/Investor/>
16. Consultation Paper at paragraph 28
17. Council of Institutional Investors. (2023). Policies on Corporate Governance, paragraph 2.4 at:https://www.cii.org/corp_gov_policies
18. HKIoDHong Kong Institute of Directors. (2020). “HKIoD Voices Reservations about “Lead INED” but Affirms Room for Improving Effectiveness of INEDs”, at:<https://www.hkiod.com/wp-content/uploads/document/>

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.

Mandating continuous professional development is acceptable in our view. However, specifying the areas that must be covered is overly rigid and we question whether this would enhance corporate governance of ListCos, particularly in the case of ListCos operating in regulated sectors.

Please refer to our response to question 2(d) below regarding our concerns on mandating training in designated areas.

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.

Excessive and rigid induction training

Although we agree that induction training is a desirable onboarding process, we are of the view that 24 hours of induction training within the first eighteen months after a new director's appointment in addition to the induction training provided by ListCos (Note 19) is excessive and would not be likely to significantly improve the skills of new directors. Having a set minimum number of training hours for First-time Directors is far too prescriptive and may serve to dissuade high quality and experienced persons from joining ListCo boards as they might feel that a minimum of 24 hours of induction training is a waste of their time. We would also point out that while paragraph 57 of the Consultation Paper states that the 24 hours of induction training required for First-time Directors within 18 months of their appointment will be additional to the ListCo's general induction training for new directors, this is not made clear in the drafting of revised Code Provision C.1.1(a). On the contrary, that CP could be read as allowing the induction training for "newly appointed directors" to be incorporated within the 24-hour induction training for "First-time directors" under proposed Listing Rule 3.09H.

We consider 24 hours of induction training on top of the ListCo's general induction training to be completely disproportionate. By way of comparison, the corporate governance rules in Australia require listed companies to offer

induction training to their new directors but does not set a minimum duration (Note 20). Induction training should be “tailored to [directors’] existing skills, knowledge and experience” and “if a director is not familiar with the legal framework that governs the entity, the entity’s induction program should include training on their legal duties and responsibilities under the key legislation governing the entity and the listing rules”. Australia-listed companies are free to formulate their own induction course for new directors, giving them the flexibility to tailor the training according to the company’s business and the prior experience of the new director. As the training should be focused on introducing the new director to the operations and rules that are directly relevant to the particular ListCo’s business, training on topics that are not targeted at the specific ListCo would be redundant, especially when the new director will receive the ListCo’s general induction training for new directors in any event.

Despite not having previously acted as a ListCo director, a new director will undoubtedly bring to the position a range of skills required to act as such. Depending on their background and prior experience, some directors may already be familiar with the mandatory topics under the proposed continuous professional development requirements notwithstanding their lack of prior experience as a ListCo director. Under Section 210(5)(a) of the Singapore Exchange Limited’s (“SGX”) listing rules, directors without prior experience as a director of an SGX-listed company are required to undergo training. However, a director does not need to undergo training if, in the view of the nominating committee, the director does not need such training because the director possesses other relevant experience. This exemption recognises that training on prescribed topics may be unnecessary for new directors who already have a sufficient skillset.

We are of the view that the primary focus for newly appointed directors should be gaining an in-depth understanding of the regulatory framework and the operations of the ListCo and contributing their skills to the ListCo, rather than attending training sessions that may not directly relate to the current and future development of the ListCo. We also believe that new directors’ skillsets and understanding of the regulatory framework will naturally improve with time and experience, and we question whether extensive induction training is necessarily effective in enhancing directors’ skills.

We therefore propose that training for newly onboarded directors should be a guideline, preferably a RBP, rather than a Listing Rule requirement and that there should be no fixed minimum time requirement.

Notes:

19. Consultation Paper paragraph 57

20. See Recommendation 2.6 under the Australia CG Code at <https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>

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?

No

Please provide reasons for your views.

Directors with prior experience should be differentiated from first-time directors

We disagree with the proposed definition of “first-time directors” as including directors who are appointed to a ListCo board after a break of more than three years from being a ListCo director. Under Practice Note 2.3 published by the SGX, a “First-time Director” is defined as a director with no prior experience as a director of an SGX-listed company. We acknowledge that there may be changes in the relevant regulations over the course of three years. However, we consider that directors who have been directors of ListCos before may already be familiar with the regulatory requirements and the training they require should be determined on a case-by-case basis. The training provided to a director who has previously acted as a Listco director should differ from that provided to someone who has never been a ListCo director before. In the case of a director who has previously been a ListCo director, we consider that the director’s training covering regulatory updates since they were last a ListCo director would be appropriate and sufficient for the relevant director to refresh their knowledge of the regulatory requirements for ListCos.

In addition, some individuals who have not previously served on a ListCo board may have significant experience and expertise in relation to listed company boards gained, for example, in the course of their work as professionals or serving on boards outside Hong Kong. They may already have significant knowledge and may be in a different position from someone with only executive experience. Assessing the training needs of “First-time” directors should therefore be determined on a case-by-case basis.

We also do not agree that INEDs’ time is usefully spent on mandatory CPD on designated topics after their appointment. INEDs are appointed for their skill sets – they should not need to be taught skills after joining. Directors should be given the flexibility to utilise their time in serving the Listco and enhancing their knowledge of regulatory obligations that are relevant to the Listco’s operations and industry sector. An overly prescriptive and bureaucratic rules-based approach will simply lead to valueless box ticking for compliance purposes.

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?

No

Please provide reasons for your views.

A prescribed summary curriculum may lead to lack of flexibility in deploying appropriate directors’ training in new and developing areas directly relevant to a particular ListCo. Although the areas of study proposed in the Consultation Paper are fairly wide, it is observed that not all areas listed are likely to undergo rapid change each financial year. It may therefore not be useful for directors to repeatedly receive training on the same areas. As it is already the inherent duty of directors to observe all relevant rules and regulations applicable to them and the ListCo they serve, it is not desirable to specifically designate topics on which directors must receive training. Given that the business models of ListCos greatly differ depending on the relevant industry, size and history of the ListCo, the skills and training for directors should be tailored to the needs of each ListCo. Directors should be given the flexibility to utilise their time in serving the ListCo and enhance their knowledge on areas and regulatory obligations that will enhance the directors’ knowledge relevant to the operations of the ListCo as well as the ListCo’s industry sector.

This flexibility to tailor the training to the needs of the ListCo can be seen in various jurisdictions where continuous training is required. For instance, the corporate governance rules in Australia and for the NYSE do not mandate core topics that all directors must take. Some companies listed on NASDAQ and the NYSE include terms in their corporate governance guidelines requiring directors and newly appointed directors to participate in orientation programs and ongoing education. These terms often specify that the training should focus on familiarising the directors with the business and strategy of the company (Note 21), the financial and operational updates of the company, as well as the development of the industry in which the listed company operates (Note 22). Some NYSE-listed companies do not have a formal training program (Note 23) but still fulfil the continuing education disclosure requirement that must be included in the listed company's corporate governance guidelines under NYSE Listed Company Manual 303A.09.

Although under the current proposal, ListCos may elect the particular format of the training, the minimum required topics would still restrict the flexibility to optimise the resources of the ListCo to facilitate training that would support the development and growth of the business of the ListCo as well as the professional growth of its directors.

Notes:

21. See the corporate governance guidelines of Alphabet Inc., a company listed on NASDAQ <https://abc.xyz/investor/board-and-governance/corporate-governance-guidelines/>

22. See the corporate governance guidelines of Eli Lilly and Company listed on the NYSE at:
https://assets.ctfassets.net/srys4ukjcerm/4fSISQ46rSyJ8vqejtI1gD/cacd896ed0357c37296428ba9bab49ff/Corporate_Governance_Guidelines.pdf

23. See the corporate governance guidelines of Berkshire Hathaway Inc. listed on the NYSE at:
<https://www.berkshirehathaway.com/govern/corpgov.pdf>

Question 3

Do you agree with the proposed consequential changes to Principle C.1 and CP C.1.1 of the CG Code?

No

Please provide reasons for your views.

Please see our comments on question 2 above.

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.

We note that many ListCos have policies on board evaluation pursuant to the current RBP and we consider that this should remain an RBP and not be upgraded to a CP.

Lack of clarity as to the scope of the review under the current RBP

However, more clarification of the requirements for the formal evaluation under the current RBP would be helpful. In comparison, Recommendation 1.6 of the Australian corporate governance code, Provisions 5.1 and 5.2 of the Singaporean corporate governance code, and Provisions 21 to 23 of the UK corporate governance code, give details of the subject(s) of board evaluations, for instance, whether the evaluation should cover board committees and whether individual evaluation of each director is required. Some of the above provisions specify that the nomination committee should be responsible for conducting the review. Under the present proposals, the ListCo would be required to disclose how the review was conducted and the responsible departments involved in conducting it. Although the Consultation Paper stated that the HK Exchange expects evaluation on the board's performance as a whole rather than individually, this is not made clear in the wording of the proposed requirement.

We believe that external reviews should not be mandatory as these could be an undue burden on less-resourced ListCos. In the UK, external board reviews are only required for FTSE 350 companies that are larger issuers. Under the NYSE Listed Company Manual 303A.09, a self-evaluation is required.

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.

We do not agree with the proposal which seems overly bureaucratic. The skills of a board are complex and cannot easily be summarised in a simple matrix. There are some requirements for technical skills (such as an accounting qualification for an Audit Committee Chair etc.), but more broadly, the skill sets may be many and varied. The personalities of the directors are also highly relevant – are they willing to speak up on difficult issues, do they challenge management and its plans etc? We are not sure what is to be gained from an overly prescriptive and bureaucratic rules-based approach which could easily lead to valueless box ticking for compliance purposes. The underlying principle that a board should have the correct mix of skills and experience should prevail.

Clearly, if the board of a ListCo determines that a matrix of board skills constitutes meaningful disclosure to stakeholders, they may opt to include this in the relevant ListCo's annual report or relevant circulars. This may be relevant, for example, to shareholders considering the election or re-election of directors.

Not necessarily adding materially to investor disclosure

However, as the strategic objectives of a ListCo can and should evolve over time, and at times quite rapidly, we are of the view that a matrix may not necessarily serve to meaningfully augment disclosure to stakeholders who already have access to the profiles of the directors and senior management of a ListCo. The business of a ListCo and hence the skills required of directors can evolve on a dynamic basis due to shifts in the business environment, industry trends and strategic goals. We are of the view that a "snapshot" skills matrix may not necessarily enhance the information available to stakeholders regarding the directors and senior management.

For these reasons, we are of the view that disclosure of a skills matrix should not be a CP.

Role of INEDs including critically evaluating the future plans of a ListCo

Additionally, the aim of aligning directors' skills and experience with the ListCo's strategic objectives and desired culture may at times run counter to, or prove to be partially at odds with, the roles of NEDs and INEDs of ListCos. As stated in the Corporate Governance Guidance published by the HK Exchange in December 2021, NEDs and INEDs are expected to independently scrutinise the strategy of the ListCo and monitor its performance (Note 24). The fact that the skills of board members, especially those of INEDs or NEDs, do not entirely align with the future plans of the ListCo is not necessarily a relevant predictor of the ability of a ListCo to achieve its future goals.

Impact on improving the abilities of the board

Further, as referred to above, as it is a current requirement for the experience of directors to be disclosed upon nomination and many ListCos also disclose the biographies of directors in their annual report, we question whether further dissection of the skills of all directors and adding an additional format for disclosure would significantly improve the overall capability of the board or provide useful disclosure. We have a particular concern that such a requirement may encourage a "box-ticking" approach to the balancing of board skills and attributes.

Notes:

24. The 2021 Corporate Governance Guidelines are available at: https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Corporate-Governance-Practices/guide_board_dir.pdf

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.

We generally agree that a cap on the number of concurrent directorships will deter the appointment to a ListCo board of persons who are likely to fail to actively or meaningfully contribute to the ListCo. However, when considering practicality and the situation in Hong Kong, in our view, there should not be a universal hard cap on the number of concurrent directorships. An appropriate cap depends on a number of factors, including: (i) the nature of the ListCo; (ii) the nature of the other directorships and commitments (for example pro bono or public sector boards or committees) held by the relevant director; (iii) the amount of time the relevant director is willing and able to commit to the board position; and (iv) the age, qualifications and disposition of the relevant director.

Preferable for each ListCo to separately evaluate its directors

As the responsibilities of directors heavily depend on the type of company and the culture of the board, a fixed number applicable to all ListCos may not be suitable.

Looking at a sample of the corporate governance guidelines of companies listed on the NYSE and NASDAQ, the maximum number of external appointments differ. Some very large companies such as Apple Inc. (Note 25) impose a limit of four other appointments on publicly listed companies for all directors and a maximum of two other director appointments for the CEO. Some companies such as JP Morgan Chase (Note 26) and Nvidia Corporation (Note 27) impose a similar cap but also allow the board or relevant committees to permit exemptions to this rule where the board determines that an additional appointment would not impair the director's ability to carry out their responsibilities to the listed company. In addition to the above, Microsoft Corporation (Note 28) further limits the number of boards that members of the audit committee may serve on. Some companies such as Amazon.com Inc. (Note 29) set the restriction to a total of three concurrent directorships for all directors and two for executive directors, except with the approval of the corporate governance committee, while some, including Exxon Mobil Corporation (Note 30), emphasise the expectation that directors should devote sufficient time to the company without limiting the maximum

number of concurrent directorships. The variation in the cap imposed on the number of directorships illustrated above shows that a one-size-fits-all cap may not be desirable, and that the ListCo itself is in the best position to judge the level of commitment expected of its directors and the time commitment of individual directors. We believe that ListCos should be given the flexibility to determine their own limit on INEDs' concurrent directorships, and should be allowed to not impose a cap if they choose. This assessment should take into account the nature and complexity of the ListCo's business since a board position on a tech giant is likely to be more onerous than a board seat on a small scale-up company.

It is also likely that institutional investors may object to INEDs who are regarded as over-committed and the relevant ListCo would likely take this into account when appointing directors.

Giving weight to the nature of other commitments of relevant INEDs

The ability of directors to devote sufficient time to each of their directorships also depends on the role and nature of their other commitments. For instance, full-time INEDs who do not have other non-directorial positions may be able to devote sufficient time to sit on more than six ListCo boards. The capacity of each director will vary depending on their other commitments. Other jurisdictions, such as Singapore (Note 31) and Australia (Note 32), do not impose hard caps on the maximum number of directorships that directors (including INEDs) can hold, although the corporate governance policies recommend that the number of other external appointments should be taken into account when evaluating whether a director is suitable for appointment and also require disclosure of other directorships.

We are therefore of the view that ListCos should be given the discretion to determine the cap and provide exceptions to the cap as they deem necessary.

Benefits of multi-directorships

Based on our experience, we find that directors with multiple directorships can have an enhanced ability to contribute to our board by bringing insights, perspectives and observations such as corporate governance measures and

practices (whilst avoiding disclosing confidential information) gained through the experience of sitting on the boards of other ListCos. Experience gained from other ListCos is valuable in providing boards with fresh perspectives and ideas to improve the management of the ListCo. As long as the director is able to ensure that they afford sufficient time to each directorship to fully discharge their duties without prejudicing any of the ListCos they serve, it is not necessarily detrimental for an individual to hold more than six ListCo board positions.

Notes:

25. See the corporate governance guidelines of Apple Inc. listed on NASDAQ at:
https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/2022-08-17-corporate-governance-guidelines.pdf
26. See the corporate governance guidelines of JPMorganChase listed on NYSE at <https://www.jpmorganchase.com/about/governance/corporate-governance-principles>
27. See the corporate governance guidelines of Nvidia Corporation listed on NASDAQ at:
https://s201.q4cdn.com/141608511/files/doc_governance/2024/06/26/NVIDIA-Corporate-Governance-Policies-June-2024.pdf
28. See the corporate governance guidelines of Microsoft Corporation listed on NASDAQ at:
<https://view.officeapps.live.com/op/view.aspx?src=https://c.s-microsoft.com/en-us/CMSFiles/Corporate%20Governance%20Guidelines.docx?version=5213202b-595e-3407-b30e-d48515f12eaa>
29. See the corporate governance guidelines of Amazon.com Inc. listed on NASDAQ at: <https://ir.aboutamazon.com/corporate-governance/documents-and-charters/guidelines-on-significant-corporate-governance-issues/default.aspx>
30. See the corporate governance guidelines of Exxon Mobile Corporation listed on NYSE at: <https://corporate.exxonmobil.com/corporate-governance/corporate-governance-guidelines-and-additional-policies#CorporateGovernanceGuidelines>
31. Singapore Code of Corporate Governance Provisions 4.5
32. ASX Corporate Governance Principles and Recommendation 1.2

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?

No

Please provide reasons for your views.

We are of the view that the transitional period of three years may not be sufficient for certain ListCos which will have a reduced number of directors due to some directors exceeding the six-directorship cap and having to be removed from ListCo boards. This difficulty also relates to the challenges of appointing suitable and qualified directors on ListCo boards as will be further explained in the response to question 8 below.

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.

As mentioned in our comments on question 6, time commitment and contribution differs among directors, and a director’s suitability to serve on a board should be determined on a case-by-case basis. Requirements for the nomination committee to annually assess the position may assist the ListCo in determining the directors’ ability to discharge their duties. In our view, under the existing requirements, each director already has a duty to act in the best interests of the Listco and its shareholders as a whole, which would include ensuring that the Listco has a functioning and suitably qualified board comprised of directors devoting appropriate amounts of time and attention to their duties. For this reason, we would suggest that if the HK Exchange proceeds with the proposed assessment by the nomination committee, it should be an RBP and not a Mandatory Disclosure Requirement (“MDR”).

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 strongly disagree that the hard cap of nine years on the length of tenure will improve independence, and we are of the view that a hard cap is neither practical nor beneficial to the future development of ListCos, especially those in regulated industries where knowledge and experience in the relevant industries is a highly valuable resource.

Time required for directors to fully understand a ListCo's business model and relevant regulatory framework

It can take a significant amount of time for an INED to become familiar with the business and operations of a ListCo, particularly if it is large and complex, and/or operates in a regulated business requiring compliance with complex regulations outside the Listing Rules. Further, it is not practical to set a hard cap to be applied to all ListCos in different industries since the time required for a director to familiarise himself or herself with a regulatory framework may vary considerably given the nature of the relevant industry and the complexity of the ListCo's business. Taking ListCos in the banking and insurance sector as an example, these companies are heavily regulated and are subject to onerous and complicated regulatory requirements which take time and experience to navigate. In a sample of corporate governance guidelines of NASDAQ- and NYSE-listed companies reviewed by us (Note 33), there is no hard cap on the number of terms a director can serve, and many state that the listed company is able to benefit from directors who have gained in-depth insight into the corporation. For companies that have recommended tenure lengths, such as the tech-giant Microsoft Corporation (Note 34), a 10-year limit is not set on each independent director individually, but rather on the average tenure of all independent directors as a whole. The Proxy Voting Guidelines published by Credit Suisse also support the view that the tenure of the board should be viewed as a whole as opposed to hard caps on individual directors (Note 35). Studies on corporate governance have found that there is a positive correlation between the length of the tenure of independent directors and firm performance, and that it would take around six years before an independent director is able to provide contributions that improve enterprise performance (Note 36). The corporate governance guidelines of Walmart Inc. also expect an outside director to be in office for a minimum of six years (Note 37). With a longer tenure, independent directors will benefit from the institutional knowledge of the ListCo, knowledge of past events concerning the ListCo (Note 38), and the industry in which it operates, facilitating their ability to scrutinise the decisions of other directors and respond more effectively should a crisis arise. In addition, given that there are

no hard caps imposed for companies listed on other leading exchanges such as the NYSE, NASDAQ and the London Stock Exchange, imposing a hard cap for ListCos on the HK Exchange may lower its attractiveness to companies looking to list on the HK Exchange.

As explicitly recognised under Recommendation 2.3 of the Corporate Governance code of Australia cited in the Consultation Paper, the mere fact that a director has served on the board for a long period is not of itself indicative that the director is too close to the management, but rather, they can still be considered independent. A board may still conclude that the relevant director is sufficiently independent to serve as an INED even if the INED has already held office for more than ten years. As Hong Kong already has in place extensive guidelines on independence and the requirement for a separate shareholder resolution to approve the appointment of INEDs who have served more than nine years, the nomination committee of ListCos should be given the discretion to consider whether the background and performance of the INEDs meet the independence requirements in the light of a ListCo's specific circumstances (Note 39). All shareholders of a ListCo, as the interested stakeholders, also have the right to vote in general meetings of the shareholders to decide on the nomination committee's recommendations and exercise their judgment in determining who would be the best candidate to fill director (including INED) positions. If shareholders as a whole form the view that the directors, or specifically the INEDs, failed to exercise their impartial role in scrutinising other executive directors, the shareholders can then vote against the INED's appointment in the general meeting. Consequently, a blanket cap imposed by regulators may not be in the interests of a ListCo and its shareholders as it does not take into account the relevant circumstances of each ListCo and the specific capabilities of each INED.

Intensifying the issue of shortage of qualified candidates to serve as INEDs

Additionally, a hard cap mandating ListCos to appoint replacement INEDs may impair the development of the ListCo and good corporate governance due to the acute shortage of qualified persons qualified to act as INEDs in Hong Kong and especially in the banking sector. Indeed the Consultation Paper states that there are approximately 1,500 Long Serving INEDs in Hong Kong that would need to be replaced if the new proposals are adopted, which would be extremely challenging both for ListCos as a group, and for individual ListCos. The pool of competent INEDs available for selection is relatively

small and the process of selecting and appointing INEDs is challenging, especially for heavily regulated ListCos. Directors of authorised institutions such as banks are required under Section 71 Banking Ordinance (Chapter 155 of the laws of Hong Kong), to obtain prior consent from the Hong Kong Monetary Authority (the “HKMA”). We have observed that the HKMA can take around a year to complete background checks on a proposed INED and evaluate an application. Pending HKMA approval, some directors may pursue other business plans and ultimately decide not to take up the directorship. Accordingly, ListCos may encounter challenges in ensuring they meet the new requirements. In our view, the appointment of INEDs should be guided by their competence rather than the length of time they have served. We are therefore concerned that mandating the retirement of INEDs may lead to a deterioration in the quality of the board and INEDs of some ListCos.

In addition, for ListCos whose overseas operations are subject to the regulations of that jurisdiction, it is possible that there are further restrictions on the appointment of directors. For instance, ListCos engaging in banking and financial activities in Mainland China are required to notify and obtain approval from the National Financial Regulatory Administration regarding the appointment and changes of directors. Based on our observations and past experience, an INED who serves on the board of a relevant subsidiary of a ListCo (for example a subsidiary in Mainland China) is not permitted to concurrently serve as an INED of the ListCo. Hence, these additional restrictions further reduce the pool of INED candidates from which ListCos can select.

Basis of setting the cap at nine years

We also question the basis on which the nine-year cap is set. The materials published by Glass Lewis and BlackRock cited in the Consultation Paper both advise that directors should be classified as non-independent after twelve years of service rather than nine years. According to the proxy voting guidelines published by the Institutional Shareholder Services Group of Companies (ISS) (Note 40) and HSBC Asset Management (Note 41), although directors with a tenure of more than nine years are prima facie deemed to be non-independent, this position can be rebutted with clear justifications from the listed company. Although asset managers such as Columbia Threadneedle Investments (Note 42) and Fidelity (Note 43) recognise that excessive tenures may diminish the independence of directors, there is no fixed time period after which a director is deemed to have ceased

to be independent. We therefore question whether the view that nine years is an appropriate threshold to determine directors' independence is substantiated by relevant evidence.

Notes:

33. For instance the corporate governance guidelines of Apple Inc., Nvidia, ExxonMobil and Eli Lilly and Company

34. See the corporate governance guidelines of Microsoft Corporation at: <https://view.officeapps.live.com/op/view.aspx?src=https://c.s-microsoft.com/en-us/CMSFiles/Corporate%20Governance%20Guidelines.docx?version=5213202b-595e-3407-b30e-d48515f12eaa>

35. See the Proxy Voting Guidelines of Credit Suisse at: <https://am.credit-suisse.com/content/dam/csam/docs/esg/brochure-proxy-voting-2024-eng.pdf>

36. Reguera-Alvarado, N. and Bravo, F. (2017). "The Effect of Independent Directors' Characteristics on Firm Performance: Tenure and Multiple Directorships". <https://doi.org/10.1016/j.ribaf.2017.04.045>

37. See the corporate governance guidelines of Walmart Inc. at https://s201.q4cdn.com/262069030/files/doc_governance/2023/04/legal-10614492-v1-wmt_corporate_governance_guidelines_4_11_2023.pdf

38. Bonini, Justin Deng, Ferrari, M and Kose, J. "On Long-Tenured Independent Directors" . Available at: https://www.researchgate.net/profile/Stefano-Bonini/publication/316859464_On_Long-Tenured_Independent_Directors/links/59147d6a0f7e9b70f49c1b6b/On-Long-Tenured-Independent-Directors.pdf

39. For instance, the global proxy voting policy of Invesco, an investment management firm, states that the nominating committee is best positioned to determine whether the director term limits are fit to fulfil the goals of the company and generally opposes the limitation of tenure of outside directors by imposing mandatory retirement ages. See the global proxy voting policy of Invesco at <https://www.invesco.com/content/dam/invesco/corporate/en/pdfs/regulatory/global-proxy-voting-policy.pdf>

40. See the Hong Kong Proxy Voting Guidelines and Benchmark Policy Recommendations published by the Institutional Shareholder Services Group of Companies (ISS) at:

<https://www.issgovernance.com/file/policy/active/asiapacific/Hong-Kong-Voting-Guidelines.pdf>

41. See the Global Voting Guidelines of HSBC Asset Management at file:///C:/Users/holyng/Downloads/global-voting-guidelines-en%20(1).pdf See the Global Voting Guidelines of HSBC Asset Management at file:///C:/Users/holyng/Downloads/global-voting-guidelines-en%20(1).pdf

42. See the Corporate Guidelines published by Columbia Threadneedle, an asset management company with retail and institutional investors, at: <https://docs.columbiathreadneedle.com/documents/Responsible%20Investment%20-%20Corporate%20Governance%20Guidelines%20CGG.pdf?inline=true>

43. See the Hong Kong Sustainable Investing Voting Principles and Guidelines published by Fidelity at: https://www.fidelity.com.hk/static/hong-kong/pdf/campaign/Fidelity_Voting%20Policy_2023_HK.pdf

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?

No

Please provide reasons for your views.

As mentioned in our response to question 8(a), we doubt that a directors' independence can and should be measured by the number of years they have served on the board. Similarly, the eligibility of a person to be sufficiently independent to be nominated as an INED should not be determined by the number of years the person has left the board of the relevant ListCo. Under Code Provision B.3.1 of the Current CG Code, the duties of a nomination committee include, inter alia, identifying the individuals suitably qualified to become a board member and assessing the independence of the individual INED. As such, the nomination committee's recommendations should be purely based on whether the re-appointment of the relevant director would be in the best interests of the ListCo and whether the candidate is independent in their opinion, and should not be restricted by a cooling-off period.

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.

Due to the fact that there is a decreasing number of qualified directors in Hong Kong and hence increasing difficulty in appointing suitable persons to the board as mentioned in our comments to question 8(a) above, we are of the view that the transitional period of three years would not sufficiently alleviate our concerns.

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.

We agree that specific disclosure in the corporate governance report would make it more convenient for shareholders to evaluate the relevant statistics in relation to the length of tenure of directors.

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?

Yes

Please provide reasons for your views.

We generally agree that in our currently evolving business environment, having at least one person of a different gender (Note 44) on the nomination committee could enhance board diversity and attract opinions from other perspectives during the director nomination stage. However, we are concerned that it may be challenging to appoint competent persons to the nomination committee of a different gender given that the pool of qualified persons is already very limited as discussed in our comments on question 8 above.

It may also be useful to consider clarifying the meaning of “gender” as this could potentially refer to both social gender and biological sex, making the regulatory requirements unclear. This is also the approach taken in the Sex Discrimination Ordinance (Chapter 480 of the Laws of Hong Kong) where

reference is made to “sex” rather than “gender”. Alternatively, the HK Exchange could consider adopting the term “gender identity or sex” used in Listing Rule 9.8.6(1) of the London Stock Exchange on disclosure of numerical data in relation to diversity depending on the HK Exchange’s conception of board diversity which would be helpful to clarify. If, by using the term “gender” instead of “sex”, it is intended to follow the London Stock Exchange’s approach, with or without explicitly specifying that “gender” is meant to convey “gender identity”, then the basis of classification of the individuals concerned in relation to the Laws of Hong Kong relevant to this issue may need to be clarified, as some interpretations of this concept hold that “gender” or “gender identity” may be fluid, situational or non-binary, and therefore may remain subject to multiple changes over the course of time, rather than being clarified by the individual concerned through any one-time declaration, public statement and/or documentary or legal reclassification.

Notes:

44. Note, however, the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong), which states that references to a “masculine gender” would include the feminine gender as well as neuter genders.

https://www.elegislation.gov.hk/hk/cap1?xid=ID_1438402519833_001&SEARCH_WITHIN_CAP_TXT=gender

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.

Whilst some ListCos may choose to have and disclose a diversity policy that applies to the workforce, we are of the view that it is unduly burdensome for this to be a mandatory requirement. We would propose that rather than a Listing Rule, it should be left to each ListCo to formulate a policy applicable to the workforce in the interest of the particular ListCo and its stakeholders, or at most for this proposal to be an RBP.

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.

An annual review of the board diversity policy can provide information to investors as to a ListCo's progress in achieving board diversity goals. However, for this to be a MDR on an annual basis appears excessive and we would propose instead an MDR on a 3-yearly basis.

We also refer to our comments in our response to question 8 above concerning the reducing pool of available suitable ListCo director candidates.

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?

Yes

Please provide reasons for your views.

We agree with the proposal as disclosures on the gender ratio in relation to ListCos are currently required in the corporate governance report and we do not anticipate that sub-dividing the disclosure into senior management and other workforce excluding senior management would impose an additional burden on ListCos.

We also refer to our comments in our response to question 10 above concerning the use of the word "gender".

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.

We agree with this proposal to ensure due compliance with the rule requirement for boards of ListCos to have at least one member of a different sex.

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?

Yes

Please provide reasons for your views.

We generally agree with this proposal as this is in line with our current practice of conducting reviews on risk management and internal controls annually.

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.

Notwithstanding our comments in support of conducting reviews on risk management and internal controls, we are of the view that a mandatory review annually may place a heavy burden on less-resourced ListCos. As the scope of the review requires extensive and in-depth evaluation of various matters, ListCos are likely to be required to engage auditors and accountants to assist with this exercise. We suggest that more flexibility should be given to less-resourced ListCos to determine the suitable frequency of risk management and internal control reviews, or alternatively to explain the reasons why the reviews are not conducted for a particular year. We propose that this should be a CP in relation to annual reviews and an MDR in relation to reviews every three years.

It is also unclear from the proposals whether external reviews are mandatory or not. We are of the view that external reviews of risk management and internal control systems should not be mandatory as this would place an undue burden on the resources of ListCos to engage an external provider to

carry out extensive reviews. As the risk management and internal controls approach adopted by ListCos of different industries are different, ListCos should be given the flexibility to select the mode of review that would be most effective for them. Therefore, we suggest that if the HK Exchange were to propose external reviews of risk management and internal control systems, this should be an RBP and not an MDR.

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?

Yes

Please provide reasons for your views.

We agree with this proposal. The clarifications on the scope of the review and disclosure are also helpful in clarifying the rule requirements to ensure due compliance with the expectations of the HK Exchange.

We also refer to our comments in our response to question 15(b) above on external reviews of risk management and internal control systems.

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 requirement for specific disclosure on dividend policy, however, we propose that the HK Exchange acknowledge the parameters of the "policy" taking into account the practical procedures for the payment of dividends. Based on our experience, regulated institutions are required to notify the regulatory authorities of their intention to pay dividends and seek their views. There have been instances in the past where a regulatory authority has refused to allow the payment of dividends or commented on the amount to be paid. It is therefore likely that ListCos' dividend policies will need to reflect that a dividend policy may be subject to the views of regulators. It

would be helpful if the HK Exchange could confirm whether this approach to drafting the dividend policy would meet the 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?

Yes

Please provide reasons for your views.

We agree with this proposal as we do not anticipate that it would impose overly burdensome obligations on ListCos, since they are already required to announce in advance the date on which its register of members will close. Setting a record date will also enable investors and interested shareholders to be informed of relevant record dates prior to voting or distribution of dividends so that investors can make the necessary transfers and arrangements to ensure that the rights can be properly exercised. This proposal also aligns with international positions such as in Singapore (Note 45), Australia (Note 46) and the NYSE (Note 47).

Notes:

- 45. SGX Listing Rules Rule 704(26)
- 46. ASX Listing Rules Rule 3.20.1
- 47. NYSE Listed Company Manual 204.12, 401.03

Question 19

Do you agree with our proposal to codify our recommended disclosures in respect of issuers' modified auditors' opinions into the Listing Rules?

Yes

Please provide reasons for your views.

We agree with this proposal as we share the view that modifications to auditors' opinions are significant matters that should be disclosed in annual reports to provide investors with a holistic view of the financial situation of the ListCo.

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?

Yes

Please provide reasons for your views.

Under the Current CG Code, ListCos are required to provide monthly updates to directors, and we therefore consider it reasonable to give directors an explicit right to request that information if they do not receive it. As a ListCo that currently provides monthly management accounts and relevant information to all our directors, we are of the view that this is essential to keep the board well informed of operations and any outstanding issues of the ListCo on a timely basis.

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?

Yes

Please provide reasons for your views.

We agree that a uniform set of rules would streamline the different requirements. It would be useful to clarify the deadline for the establishment of a nomination committee and confirming that the requirement to formulate written terms of appointment would also be applicable to the nomination committee as opposed to just the audit and remuneration committee under the current rules.

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?

No

Please provide reasons for your views.

Referencing our comments in response to question 8 above, we are not optimistic that the transitional period of three years would alleviate our concerns including identifying, in all cases, the requisite talent that is capable of taking up INED positions. The proposals in the Consultation Paper in relation to limits on directorships, skill and “gender” diversity requirements all impose additional criteria on the selection of directors. Coupled with our observation that there appears to be a reducing number of suitably qualified

persons who are willing to act as INEDs, it is expected that it will be more challenging for ListCos to appoint quality INEDs from the existing limited pool of well-qualified potential INEDs.