<u>Submitted via Qualtrics</u>

Egon Zehnder

Company/Organisation view

Others (please specify)

<u>Question 1</u>

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?

Yes

Please provide reasons for your views.

We agree, but please consider our response below.

Strengths: Implementation aligns with practices in the UK, Singapore, Australia, and the US, where the designation of a senior or lead independent director is encouraged to ensure independent oversight and better communication between shareholders and the board, among INEDs, between INEDs and other directors, and between the board and management.

Concerns or potential pitfalls:

a) Criteria for Selection – HKEX could provide detailed guidelines on the qualifications and experience required for a Lead INED. This ensures that the appointed individual has the necessary skills and independence. Such criteria could include the tenure of the director, their other roles on other boards (chair or Chair of a committee), the extent and nature of their executive career, and their performance on the board.

b) Role Clarity – The proposal says further guidance shall be made available later. HKEX could clearly define the role, responsibilities, and authority of the Lead INED. We would suggest activities like acting as an intermediary between the board and shareholders, leading the regular evaluation, and, when appropriate, the succession process of the board chair.

c) Appointment Procedure – There should be some guidance on the appointment process. As the issue affects the whole board, we would suggest the board be involved, but the process of appointment could be led by the chair or the Chair of the Nominations Committee.

d) Tenure, Rotation, and Succession – How do we determine the appropriate tenure of a Lead INED? HKEX could suggest limiting the tenure of the Lead INED, with a recommended maximum term and mandatory rotation after a certain period.

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?

Yes

Please provide reasons for your views.

We support making continuous professional development mandatory for all existing directors. This approach ensures that directors remain knowledgeable about their roles, responsibilities, and the evolving regulatory landscape. This aligns with the practices of other regulators, such as the ASX Corporate Governance Principles and Recommendations, which emphasize the importance of induction and professional development for directors, and the UK CG Code, which requires ongoing professional development for board members.

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?

Yes

Please provide reasons for your views.

We agree with the proposal to require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment. We believe that 24 hours of training is adequate for new directors to gain a solid understanding of their roles and responsibilities. Additionally, it would be beneficial for the HKEX to outline the specific topics that should be covered in this training to ensure its relevance and quality.

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?

Yes

Please provide reasons for your views.

We believe that distinguishing between first-time directors and experienced directors is a sensible approach. The proposed definition of "First-time Directors" is clear and appropriate, as it captures individuals who are new to the role as well as those who may need to refresh their knowledge after a significant period away from directorship.

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?

Yes

Please provide reasons for your views.

We agree that the HKEX should specify the topics that must be covered under the continuous professional development requirement. This will help ensure that the training is relevant and beneficial. However, we have some concerns regarding the quality and relevance of the training programs currently offered by various institutes in Hong Kong. We recommend that the HKEX set standards or accredit training providers to ensure the quality and relevance of the training programs. Periodic reviews of the training content would also be beneficial. Additionally, the HKEX should consider including contemporary issues such as cybersecurity and artificial intelligence, which are increasingly important for directors to understand.

Question 3

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

Yes

Please provide reasons for your views.

We agree, but please consider our response below.

The proposed changes to Principle C.1 and CP C.1.1 of the CG Code enhance the framework for director education and development.

Concerns or Potential Pitfalls:

a) While mandatory training is beneficial, the quality and relevance of the training programs are crucial. There is a risk that training could become a box-ticking exercise rather than genuinely enhancing directors' skills and knowledge. We do not believe that the various institutes in Hong Kong currently offer very high standards of training to directors. The HKEX should set standards or accredit training providers to ensure the quality and relevance of the training programs. Periodic reviews of the training content would also be beneficial.

b) HKEX should opine on the issues that experienced directors might be trained in. For example, contemporary issues such as cybersecurity or artificial intelligence could be topics that every director might be expected to have some grasp.

c) The new requirements, such as mandatory director training, regular board performance reviews, and maintaining a board skills matrix, could impose significant compliance costs, particularly on smaller issuers.

<u>**Question 4**</u>

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?

Yes

Please provide reasons for your views.

We agree, but please consider our response below.

This topic/provision is proposed to be upgraded from 'recommended best practice' to Code Provision in the Corporate Governance Code.

Strengths: Making it a code provision rather than just a recommended best practice allows for more standardized board performance review processes across issuers.

Concerns or potential pitfalls:

a) Conducting performance reviews only every two years seems sound for most issuers but might not be sufficient to address issues in a timely manner, in dynamic business environments.

b) HKEX needs to provide detailed guidelines or a framework for conducting thorough and substantive performance reviews to avoid it being a superficial exercise. We feel the majority of HKEX-listed companies do not perform proper board reviews at the moment.

c) Based on our experience, we believe that HKEX should mandate regular (every three years) external reviews. This will allow shareholders to have more confidence in the core issues of governance in each issuer. External reviews are preferred to internal ones to avoid internal biases.

d) Board performance reviews are a sensitive matter for any issuer. HKEX could balance the needs of disclosure to ensure confidentiality. The guidelines for such reviews and disclosure yet remain unknown.

e) The new requirements, such as mandatory director training, regular board performance reviews, and maintaining a board skills matrix, could impose significant compliance costs, particularly on smaller issuers.

<u>Question 5</u>

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?

Yes

Please give reasons for your views.

We agree, but please consider our response below.

Strengths: This promotes transparency and helps stakeholders understand the board's composition and areas of expertise.

The ASX Corporate Governance Principles recommend disclosing a board skills matrix to ensure a diverse and effective board. This practice is also followed in New Zealand, Singapore, and is gaining traction in other jurisdictions.

Concerns and potential pitfalls:

a) The requirement to disclose a board skills matrix could lead to overly generic or superficial disclosures if not properly guided. HKEX could propose best practice examples of disclosure for issuers to follow.

b) There may be inconsistencies in how skills and competencies are assessed and verified. Self-assessment by directors might not be objective. HKEX could recommend that the skills assessment process includes third-party validation or a peer review mechanism to ensure objectivity and accuracy.

c) The skills matrix needs to be integrated with the board's succession planning to ensure that future board appointments address any skills gaps.

d) The new requirements, such as mandatory director training, regular board performance reviews, and maintaining a board skills matrix, could impose significant compliance costs, particularly on smaller issuers.

<u>Question 6(a)</u>

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?

Yes

Please provide reasons for your views.

We support the intention behind the hard cap, as it addresses concerns about directors being overstretched and ensures they can commit sufficient time to their roles. This aligns with the UK Corporate Governance Code and ASX guidelines, which emphasize the importance of directors not being overcommitted and recommend disclosure of their other commitments. However, we have some concerns:

- The proposed cap of six board seats may be too high. Our rule of thumb, used globally, suggests that a director spends about 300 hours per year on a board role. Six boards would imply they are full-time professional directors, which may not be practical. We believe a cap of five boards might be more appropriate.
- The issue of director fees needs to be addressed. The average fee of a director of an HKEX-listed issuer is about 38% of that of an ASX-listed director, while the CEO compensation differential is only 1-2%. Although few HKEX directors perform the role for the money, remuneration is a time-honored way of valuing contributions. Currently, in Hong Kong, it is not, and is inconsistent with the idea that their role is important.
- The cap is intended to ensure directors have sufficient time to dedicate to each role. However, this one-size-fits-all approach might not be comprehensive enough. For example, Chairs of committees can spend 40% more time on their responsibilities than a normal board member, and a Chair can spend up to 250% more time. How will the role of a director factor into the cap?
- Limiting the number of directorships could result in the loss of experienced and valuable directors who bring critical expertise and insights to multiple boards. HKEX could consider providing exceptions or flexibility for directors with demonstrated capacity to handle multiple roles effectively, subject to rigorous performance evaluations.

<u>Question 6(b)</u>

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?

149

Yes

Please provide reasons for your views.

We agree with the proposed three-year transition period to implement the hard cap. This allows sufficient time for directors and listed issuers to adjust to the new requirements without causing immediate disruptions. It also provides a reasonable timeframe for directors to evaluate their commitments and make necessary adjustments to comply with the cap.

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?

Yes

Please provide reasons for your views.

We agree with the proposal to introduce a new Mandatory Disclosure Requirement (MDR) for the nomination committee to annually assess and disclose each director’s time commitment and contribution to the board. This addresses concerns about directors being overstretched and ensures transparency regarding their ability to fulfill their responsibilities. It also gives credence to the idea that the role has value and acknowledges the importance of directors' contributions. This aligns with practices in other jurisdictions, such as the UK and ASX, which emphasize the importance of directors' time commitment and professional development.

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?

Yes

Please give reasons for your views.

We agree with the proposed hard cap of nine years to strengthen board independence. The UK Corporate Governance Code suggests that non-executive directors who have served more than nine years should be subject to rigorous review to determine independence. This practice is also seen in Singapore and Australia. Beyond regulatory recommendations, it has become a standard for institutional investors who tend to vote on this issue deterministically, irrespective of the quality of the director. Having a gap between how investors and regulators see this issue is not sustainable; the regulator needs to lead. Further, nine years is a fair duration for directors to no longer be considered independent. Directors who have served for nine years will have made decisions that they will feel subject to in the future (e.g., an acquisition, a stock grant to a CEO). If these decisions are called into question later, they are not independent. While this may be a hard pill for Hong Kong issuers to swallow, if the HKEX is serious about maintaining board independence, they will hold firm. The premise of this proposal is that it helps maintain the independence of the board and ensures fresh perspectives.

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.

We do not agree that a person can be reconsidered as an INED of the same issuer after a two-year cooling-off period. We believe that it would be healthier for this period to be longer, say three or even five years. Two years is not long enough for the decisions made by the previous director to no longer be relevant. They could be put in a position of not being independent on a particular topic. Additionally, this could lead to a "revolving door" scenario where directors rotate in and out of INED roles, potentially undermining the spirit of independence. HKEX could limit the number of times a director can return as an INED after a cooling-off period to prevent abuse of the system. This could also undermine the healthy refreshment of the board by electing new directors.

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?

Yes

Please provide reasons for your views.

We agree with the proposed three-year transition period for the implementation of the hard cap. This allows sufficient time for directors and listed issuers to adjust to the new requirements without causing immediate disruptions. It also provides a reasonable timeframe for directors to evaluate their commitments and make necessary adjustments to comply with the cap.

<u>Question 9</u>

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 with the proposal to require all issuers to disclose the length of tenure of each director in the Corporate Governance Report. This enhances transparency and allows stakeholders to better assess the independence and effectiveness of the board. It aligns with best practices in corporate governance and helps ensure that directors are not overstaying their welcome, thereby maintaining the board's independence and bringing in fresh perspectives.

<u>Question 10</u>

Do you agree with our proposal to introduce a CP requiring issuers to have at least one director of a different gender on the nomination committee?

No

Please provide reasons for your views.

a) Gender diversity is just one aspect of diversity. Diversity is multi-dimensional and includes gender, age, ethnicity, professional background, and skills. A narrow focus on one aspect, such as gender, might overlook other important factors.

b) The premise that appointing a director of a different gender will lead to be better balance of discussion in the Nominations committee needs to be tested. What evidence supports this belief?

<u>Question 11</u>

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)?

Yes

Please provide reasons for your views.

Implementing this rule will ensure that every issuer considers the importance of diversity and allows their performance to be measured against their stated policy.

<u>Question 12</u>

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?

Yes

Please provide reasons for your views.

This upgrade will ensure that issuers not only contemplate diversity but also consistently evaluate their performance against their diversity policy.

<u>Question 13</u>

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.

The current gender ratio in boardrooms of issuers is abysmal. This requirement will promote greater focus and transparency, and underscore issuers' commitment to gender diversity in top management.

<u>Question 14</u>

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.

Situations may arise that necessitate temporary deviations, and issuers should be accountable for explaining these circumstances.

<u>Question 15(a)</u>

Do you agree with our proposal to emphasise in Principle D.2 the board's responsibility for the issuer's risk management and internal controls and for the (at least) annual reviews of the effectiveness of the risk management and internal control systems?

Please provide reasons for your views.

<u>Question 15(b)</u>

Do you agree with our proposal to upgrade the requirement to conduct (at least) annual reviews of the effectiveness of the issuer's risk management and internal control systems to mandatory and require the disclosures set out in MDR paragraph H?

Please provide reasons for your views.

<u>Question 16</u>

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.

<u>Question 17</u>

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.

<u>Question 18</u>

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.

<u>Question 19</u>

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.

<u>Question 20</u>

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.

<u>Question 21</u>

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.

<u>Question 22</u>

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

Please provide reasons for your views.