

**Submitted via Qualtrics****Kerry Holdings Limited****Company/Organisation view****Others (please specify)****Question 1**

**Do you agree with our proposal to introduce a new Code Provision (CP) under the Corporate Governance Code (CG Code) requiring issuers without an independent board chair to designate one independent non-executive director (INED) as a Lead INED to enhance engagement with investors and shareholders?**

No

**Please provide reasons for your views.**

We do not believe designating an INED as a Lead INED results in any material incremental benefit to shareholders and investors. All INEDs have an equal and shared responsibility to monitor and scrutinise the listed company's performance and there should not be any perception that this principle is undermined by introducing a Lead INED.

The Consultation refers to the primary responsibilities of a Lead INED being to facilitate and strengthen communication amongst INEDs, between INEDs and other directors, and with shareholders. In our experience with SGX-listed companies, designation of a lead INED does not lead to any material improvement in communication amongst INEDs, between INEDs and other directors, and with shareholders. This is primarily because the Chairman of the Board has to, and where he recuses himself the INEDs together have to, fulfil such responsibilities. In practice, different INEDs will take the lead depending on the issue at hand and how it fits with their respective areas of expertise.

We also note that NYSE and NASDAQ considered and decided such designation as being unnecessary, and that INEDs should retain flexibility as to how they organise themselves.

**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 agree there should be no specified minimum number of training hours. Each listed company is different and each Board has different expertise, knowledge, experience and training needs. Overly prescriptive requirements undermine the underlying objectives and risk becoming “tick the box” exercises.

**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 more extensive training being required for First-time Directors is reasonable.

**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.**

We disagree with the proposal to require directors who have not served as a director of a HK-listed issuer for a three-year period to receive a minimum of 24 hours of training. Whilst we agree there should be some requirements for regulatory updates, to treat a person who served as a director of a HK-listed issuer more than three years ago as entirely inexperienced in listed issuer matters and requiring 24 hours of compulsory training in 18 months is excessive. Such a requirement also discourages otherwise competent and experienced candidates from accepting directorships.

**Question 2(d)**

**Regarding continuous professional development for directors, do you agree with our proposal to specify the specific topics that must be covered under the continuous professional development requirement?**

**Please provide reasons for your views.**

**Question 3**

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

Yes

**Please provide reasons for your views.**

As explained above, we support a mandatory requirement for continuous professional development without imposing unduly prescriptive requirements that fail to recognise each listed company and its Board have different expertise, knowledge, experience and training needs.

**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.**

Retaining board performance reviews as a Recommended Best Practice is consistent with NYSE requirements. We do not believe formulating a prescriptive requirement that the Board conducts a performance review every two years results in any material benefit to shareholders and investors. Effective and conscientious Boards will be conducting regular performance reviews without a prescriptive Listing Rule requirement to do so. Bad-behaving Boards will treat a prescribed performance review as a “tick the box” exercise, resulting in little benefit to shareholders and investors.

Shareholders and investors judge the effectiveness and performance of a Board through industry KPIs that are relevant to the listed company and not through a board performance review disclosed through the annual report. It is ultimately the shareholders of the listed company who elect each director to the Board, and the ultimate Board performance review is its share price.

**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.**

It is impractical and overly simplifies the value directors bring to a Board to seek to reduce such skills and experience of each individual director into a one-size-fits-all matrix. Identifying effective directors is not done through a checklist of skill sets; it requires a holistic assessment of each individual's background, training, experience, skills, perspectives, interests and personality to determine the value a director brings to the Board.

Seeking to pigeon-hole each directors' background into a matrix is counterproductive to building an effective Board. We also note none of NYSE, NASDAQ nor LSE require such prescriptive disclosures.

**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?**

Yes

**Please provide reasons for your views.**

We agree an INED serving on the Boards of more than six HK-listed issuers will likely find it difficult to devote sufficient time to each issuer.

**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?**

Yes

**Please provide reasons for your views.**

This gives issuers time to carry out orderly succession planning.

**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.**

If the nomination committee is not satisfied with a director's time commitment and contribution, the appropriate outcome is for the director to resign from the Board instead of a disclosure in the annual report. It does not serve the interests of shareholders and investors to mandate such a disclosure. Such mandatory disclosure also does not exist in NYSE, NASDAQ nor LSE.

**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 do not believe the mere passing of time erodes the independence of an INED. Rather, the independence of an INED depends on the factors already well articulated in Main Board Listing Rule 3.13. In our experience, longer serving INEDs gain valuable insights into the operations and personnel of a company that enable them to give better and more effective advice to management, and thereby better serve shareholders. The proposed requirement that none of the INEDs can serve for more than nine years indiscriminately deprives the company of the wisdom of long-serving INEDs, whilst failing to demonstrate that the mere passing of a nine-year period results in their integrity and independence being compromised.

As a result, we suggest the "hard cap" of nine years applies to a majority of INEDs only. This ensures a balance between INEDs with fresh ideas and new perspectives, without indiscriminately removing all longer-term INEDs who might bring unique perspectives that can only be developed through long-term participation at the listed issuer.

**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?**

Yes

**Please provide reasons for your views.**

We agree with the cooling-off period given it is a principle generally applied to the assessment of independence under Chapter 3 of the Listing Rules.

**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.**

This gives issuers time to carry out orderly succession planning.

**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.**

This requirement should not be controversial.

**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.**

**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.**

We do not believe mandating a diversity policy for the entire workforce results in any material benefit to shareholders, investors and other stakeholders. When considering a candidate for a particular opening, a listed issuer should take into account all relevant factors, including competence, skills, experience and the value a candidate brings to the listed issuer which may include gender diversity. Imposing a diversity policy for the entire workforce which is any more detailed or prescriptive than the above will either result in inflexibility or be rendered lip service.

### **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.**

Upgrading the CP to a MDR takes away the flexibility of a listed issuer to explain why an annual review of its board diversity policy may not be appropriate. If the explanation is not credible, the listed issuer will be judged by its shareholders and investors.

On the other hand, where a listed issuer has credible reasons for not carrying out annual reviews of its board diversity policy, a MDR requirement sweeps those reasons under the carpet and forces that listed issuer to pay lip service to the annual review requirement.

### **Question 13**

**Do you agree with our proposal to require as a revised MDR separate disclosure of the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management) in the CG Report?**

No

**Please provide reasons for your views.**

We agree with the proposal to require disclosure of the gender ratio of senior management. However, how "senior management" is defined will dictate the effectiveness of this disclosure. We disagree with the proposal to require disclosure of the gender ratio for the entire workforce. We query the value of disclosing the gender ratio of the entire workforce generally. In addition, for companies with a large workforce which includes high turnover of frontline workers, gathering data to accurately support this disclosure could be unduly onerous.

### **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 support codifying HKEX's existing guidance assuming it reduces HKEX's workload in responding to standard and repetitive queries. However, any codification will need to consider whether the rules are flexible enough to address different permutations or factual matrix which may warrant a non-standard approach.

**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?**

No

**Please provide reasons for your views.**

We have no objections to emphasising the Board's responsibility for the listed issuer's risk management and internal controls. However, we do not agree with a requirement for (at least) annual reviews of the effectiveness of the risk management and internal control systems.

Risk management and internal control systems are a subset of a listed issuer's corporate governance, and it is already an express duty of the Audit Committee to carry out reviews of the listed issuer's corporate governance. Which elements of corporate governance of a listed issuer warrant greater emphasis should be determined by the listed issuer on a case-by-case basis, instead of a one-size-fits-all approach.

In the case of misconduct, all directors will be equally responsible and held to account for any deficiencies in risk management and internal control systems, and this should be sufficient to address any need to review the effectiveness of risk management and internal controls.

**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.**

Please see our response to Question 15(a).

**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?**

No

**Please provide reasons for your views.**

Please see our response to Question 15(a).

**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 consider such information as relevant to a listed issuer's shareholders and investors.

**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.**

This facilitates effective administration of shareholder entitlements.

**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.**

Codifying HKEX's existing guidance brings transparency and clarity to the market.

**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.**

We agree directors are entitled to request monthly management accounts and management updates to the extent these are not provided to them.

**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.**

It is reasonable to establish terms of reference for each of the nomination, audit and remuneration committees.

**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.**

The timing would depend on when the Consultation Conclusions are published. Issuers should be allowed a reasonable period to put in place properly considered policies and frameworks to address any new requirements.

