

Submitted via Qualtrics**(Anonymous)****Company/Organisation view****Law Firm****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.

Although the Exchange's intention is not to impose additional responsibilities on the Lead INED (relative to other INEDs), in reality, INEDs with the Lead INED designation will bear additional responsibilities – in fact, if the proposal is adopted, the Exchange plans to provide further guidance on the "expected role and function" of the Lead INED. The reality is that there will be a clear distinction between the two "tiers" of INEDs.

INEDs may not wish to take on the Lead INED role due to the additional responsibilities involved, or may demand additional remuneration to reflect the additional responsibilities required of them. These difficulties place a heavy burden on listed issuers, as some of them already face practical difficulties in identifying suitable INEDs willing to serve on their boards.

Furthermore, we understand that some major stock exchanges do not adopt this kind of arrangement. In particular, the New York Stock Exchange and the Nasdaq.

The Exchange's regulatory concern underpinning this proposal is to strengthen communication between independent / minority shareholders and the board. The designation of a Lead INED does not appear to be a direct solution to address the Exchange's underlying concerns, as INEDs are not responsible for the day to day management of the issuer. The Exchange may consider other means to address its regulatory concerns, such as mandating certain investor relations procedures to channel views from minority shareholders to board level.

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.

This is sensible, as directors could keep themselves updated regarding latest developments. It is important for the Exchange not to impose a minimum number of training hours, so directors can tailor their training needs based on their individual circumstances.

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.

Although we agree that First-time Directors are likely to require some training, we think that the proposed figure (24 hours) is far too high. In our view, a more appropriate figure would be 12 hours or less.

The proposed figure (24 hours) places a huge burden on First-time Directors. If this proposal is implemented, it is likely that some First-time Directors will treat this requirement as a box-ticking exercise, which would not achieve the Exchange's regulatory aim that directors should discharge their director duties properly. Other First-time Directors may be extremely put off by the 24 hour requirement and may ultimately opt not to take on their first HK listed issuer directorship, which would reduce the pool of board candidates in the long run. These undesired side effects would not benefit the HK capital market.

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.

This is appropriate as they do not have recent experience acting as director of a HK listed issuer.

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.

The list of topics is a useful starting point for directors to consider their training needs. However, not all topics may necessarily be relevant each year, depending on the circumstances. The Exchange should not mandate directors to attend training every year that covers all the topics.

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.

Please also refer to our response to Questions 2(a) to 2(d).

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?

Yes

Please provide reasons for your views.

It is important for the Exchange not to mandate the form of the review, so issuers retain flexibility to design a review process that suits their circumstances.

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.

A board skills matrix provides a brief overview of certain elements / skills about board members. Due to its high level nature in tabular form, we do not believe it necessarily provides meaningful information for investors, especially if the matrix is prepared as part of a box-ticking exercise by issuers (e.g. issuers may design the matrix in a way so that directors will have most of the required skills).

Depending on how the matrix is presented, it may unfairly single out certain named individuals lacking certain "skills", when those individuals contribute in other valuable ways that may be less apparent. Any elaboration by the issuer on the valuable contribution that these individuals may make will be done outside of the matrix. Such information will not stand out, in contrast to the matrix.

Separately, the nomination committee has to evaluate the relevant individual as a whole when identifying potential board members. In addition to the individual's skills, experience and diversity (often emphasized by the Exchange), issuers would also consider many other factors (e.g. personality, competition for talent, individual's willingness to serve etc). A matrix by its nature is simplistic and cannot capture all these nuances.

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.

As identified by the Exchange, there are only around 23 Overboarding INEDs in the market. It is a relatively uncommon situation.

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.

We think a transition period of at least 3 years is required. In addition, the Exchange may consider extending the transition period so that the issuers affected have more time to identify replacement INEDs. Some issuers may face practical difficulties in identifying suitable INEDs (see response in Question 5).

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.

It is critical that directors are able to discharge their duties properly in a timely fashion. We agree it is appropriate for the nomination committee to assess whether a director has discharged his/her responsibilities effectively.

However, requiring the nomination committee to assess a director's "time commitment and contribution to the board" is a burdensome task. It is not a straightforward exercise, particularly in relation to non-executive directors, as evaluating time commitment / contribution is by its nature a qualitative assessment, with a strong element of subjectivity. In addition, there may not be any correlation between time commitment and the ability to discharge duties properly.

Executive directors are involved in the day to day management of the issuer. Due to the nature of the role, it is arguably easier to assess such a director's time commitment and contribution to the issuer.

In contrast, non-executive directors cannot be assessed using the same benchmark, as the nature of their role is at a more supervisory level. It is common, or even expected, that non-executive directors will have many external commitments. It is difficult to evaluate the number / scale / nature / complexity of those external commitments, and such an assessment is arguably not relevant – a non-executive director without any external commitment may not actually devote sufficient time to his/her one role or may not properly discharge his/her responsibilities; on the other hand, a diligent and efficient non-executive director may discharge his/her responsibilities in all roles properly despite wearing many hats and committing "little" time to each role.

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.

Although a long tenure may suggest an INED may no longer be as "independent" (compared to a newly appointed INED), it is merely a suggestion. It is not absolute that such an INED is incapable of acting independently – ultimately, independence and tenure are separate concepts. We also understand that other major stock exchanges including the New York Stock Exchange and the Nasdaq do not currently impose such a restriction on the tenure of INEDs.

A long serving INED capable of acting independently present several advantages. They benefit from a deep understanding of the issuer's history and operations. They may feel more comfortable with speaking up and opposing the board. In contrast, a new INED, although seemingly more "independent", may have less understanding of the issuer's background and may need more courage to speak up.

Introducing a hard cap, in effect, penalizes qualified and seasoned INEDs that have acted independently in their service. It also penalizes issuers, as they can no longer benefit from having such quality INEDs serving on their boards. Some issuers do face practical problems in identifying potential INEDs; introducing a hard cap creates an even heavier burden on such issuers, as issuers would need to seek new INEDs more frequently.

As indicated in the Exchange's consultation, a substantial proportion of HK listed issuers (over 30%) retain long serving INEDs. A mandatory cap, even if implemented with a three year transition period, would cause huge disruption to the market. Although we do not support the imposition of mandatory caps at this stage, we would urge the Exchange to consider a more gentle approach if they wish to achieve their regulatory goal of phasing out long serving INEDs completely. For example, the Exchange may first focus on requiring issuers whose INEDs are all long serving INEDs to appoint a new INED.

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 disagree with the introduction of a hard cap (see question 8(a)). However, we agree that a long serving INED should be considered as a "new INED" of the same issuer after a short 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.

We disagree with the introduction of a hard cap (see question 8(a)).

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.

The information is already publicly available.

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?

No

Please provide reasons for your views.

We believe it is far too premature to introduce this proposal. Many listed issuers only very recently introduced one director of a different gender to their board. This particular individual may not be the most appropriate member to serve on the nomination committee. Although diversity is important, it is equally important that the most suitable board members are asked to serve on the nomination committee.

The Exchange may consider delaying this initiative until the market is more mature (i.e. when most companies have a reasonable number of directors (in particular, INEDs) of a different 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)?

Yes

Please provide reasons for your views.

This helps to further promote gender diversity.

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?

Yes

Please provide reasons for your views.

This helps to further promote gender diversity.

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.

This helps to further promote gender diversity.

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.

This is a codification of current arrangements.

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 agree that the board is responsible for RMIC systems and that there should be an annual review. However, there should be a clear exemption that insignificant subsidiaries should be exempted from the annual review, otherwise it would place a heavy compliance burden on issuers, especially large scale issuers with global operations. Alternatively, the revised CP D2.1(a) should make it clear that issuers have the discretion to limit the scope of the review to exclude insignificant subsidiaries.

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?

Yes

Please provide reasons for your views.

However, the Listing Rules should make it clear that insignificant subsidiaries may be excluded from the annual review. See 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?

Yes

Please provide reasons for your views.

However, the Listing Rules should make it clear that insignificant subsidiaries may be excluded from the annual review. See 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.

Shareholders / potential shareholders can better understand their investment in the relevant issuer.

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.

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.

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.

Directors have the right to request for company information. It is useful to clarify what the minimum expectations are.

However, it may be possible that some companies have not been providing such monthly updates to directors on such a frequent basis if the directors did not request for it. These companies may need some time to improve their internal systems / coordination so they can fulfill this express requirement. Furthermore, it may be costly for some issuers to prepare monthly statements if such monthly statements are expected to be as detailed as those for quarterly reporting purposes. The Exchange may consider delaying the implementation of the revised Listing Rules so that issuers have more time to prepare for the "change".

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.

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.

Some of the Exchange's proposals are controversial in the market. Regardless of the outcome of the consultation, the implementation date (in particular, any transitional arrangements) should be further extended by at least 2 to 3 years to allow heavily-impacted issuers more time to prepare for the change.