Submitted via Qualtrics

Hong Kong Independent Non-Executive Director Association

Company/Organisation view

Professional Body / Industry Association

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 appreciate HKEX's efforts to enhance communication and engagement between issuers and their investors and shareholders. However, we have several concerns regarding the proposed introduction of a Lead INED, which we outline below:

1. Knowledge and Experience:

Unlike executive directors, INEDs do not have the same level of knowledge and experience regarding the listed companies they serve. This lack of in-depth knowledge makes it unreasonable for INEDs to assume additional responsibilities and risks associated with the role of Lead INED. The unique challenges faced by INEDs, including the need to quickly familiarize themselves with the issuer's operations and strategic direction, limit their ability to effectively discharge the duties of a Lead INED.

2. Exposure to Shareholder Risks:

The role of Lead INED involves direct communication with shareholders, which could expose the Lead INED to additional and unnecessary risks. Shareholders might mistakenly hold the Lead INED responsible for any losses or underperformance, despite the Lead INED not being involved in the day-to-day management of the company. This misplaced accountability could lead to reputational damage and legal challenges for the Lead INED.

3. Public Information Disclosure:

All the information that the Lead INED may acquire and communicate to shareholders is publicly disclosed information. Therefore, it is unnecessary to elect a Lead INED specifically to disseminate such information. Other existing communication channels, such as annual reports, press releases, and investor relations activities, are sufficient to keep shareholders informed.

4. Compensation and Risk:

Considering the current average fee level for INEDs, it is unjustifiable to require an INED to assume additional risks without proper and appropriate compensation. The additional responsibilities and potential liabilities associated with the Lead INED role are not commensurate with the typical remuneration for INEDs. This discrepancy makes it unlikely that any INEDs will voluntarily take up the position of Lead INED, thereby making the implementation of the proposed scheme challenging.

While we recognize the importance of effective communication and engagement with shareholders, we believe that the proposed introduction of a Lead INED role is not the most effective solution. The additional responsibilities and risks associated with this role, without adequate compensation, are likely to deter INEDs from accepting it. We suggest exploring alternative mechanisms to enhance shareholder engagement that do not place undue burden on INEDs.

<u>Question 2(a)</u>

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.

<u>Question 2(b)</u>

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.

We appreciate the HKEX's efforts to enhance the knowledge and skills of directors through mandatory training requirements. We believe that requiring First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment is a reasonable and necessary step to ensure that they are well-equipped to fulfill their duties effectively.

However, we suggest that the HKEX consider setting up exemptions for certain professions that already have robust training and Continuing Professional Development (CPD) requirements within their fields. For instance, licensees of Securities and Futures Commission, legal practitioners, and certificated public accountants often undergo extensive training and CPD courses as part of their professional responsibilities. These individuals typically have a strong foundation in corporate governance, regulatory compliance, and other relevant areas due to their professional training and experience.

Therefore, we recommend that the HKEX explore the feasibility of granting exemptions from the 24-hour training requirement for First-time Directors who belong to these professions. This approach would recognize the extensive training they have already received and would also alleviate any potential burden of redundant training.

It would also ensure that the training requirements remain focused on enhancing the capabilities of directors who may not have the same level of expertise or access to professional development opportunities.

While we support the proposed 24-hour training requirement for First-time Directors, we believe that introducing exemptions for certain professions would strike a balance between ensuring adequate training and recognizing the existing expertise and training commitments of these professionals.

<u>Question 2(c)</u>

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.

<u>Question 2(d)</u>

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 fully support the proposal to specify the specific topics that must be covered under the continuous professional development requirement for directors. We believe that this approach ensures that directors receive comprehensive and relevant training, which is crucial for their effective performance and the overall governance of listed issuers.

We agree that the proposed training topics, which include the roles, functions, and responsibilities of the board and its directors, legal and regulatory obligations, corporate governance and ESG matters, and other relevant areas, are essential for directors to understand and fulfill their duties. These topics align with the training courses that HKINEDA has already been providing to INEDs for continuous learning.

HKINEDA has a long-standing commitment to providing high-quality training and professional development opportunities to INEDs. Our training programs are designed to cover the key areas necessary for directors to stay informed and effective in their roles.

<u>Question 3</u>

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.

<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.

<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.

<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.

Reason

1. Time Commitment and Effectiveness:

Setting a hard cap at six directorships acknowledges the significant time and attention required to fulfill the responsibilities of an INED. This cap helps ensure that INEDs are not overburdened, allowing them to focus on their duties and contribute effectively to the governance of the issuers they serve.

2. Risk Management:

The hard cap helps mitigate the risk of conflicts of interest and potential overboarding. When INEDs are involved in too many directorships, there is an increased risk of conflicts arising from competing interests. Limiting the number of directorships helps reduce this risk, ensuring that INEDs can maintain their impartiality and focus on the best interests of each issuer.

3. International Best Practices:

The proposal aligns with international best practices and regulatory trends. Many jurisdictions have introduced similar caps to ensure that INEDs can manage their time effectively and contribute meaningfully to the boards they serve.

We have also received feedback from our members who believe that the number of directorships an individual can hold should not be strictly regulated, but rather determined by the listed issuers and their shareholders on a case-by-case basis. They argue that the capacity of an INED to effectively serve on multiple boards is influenced by a variety of factors including the complexity of the issuers' operations, the nature of their industries, and the individual's own experience and workload. Our members suggest that a more flexible approach that allows for such nuances would be more appropriate than a one-size-fits-all regulatory cap.

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?

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No

Please provide reasons for your views.

We propose extending the transition period to five years for the following reasons:

1. Succession Planning:

Implementing the hard cap requires issuers to conduct thorough succession planning to source and appoint new directors who can replace those who need to relinquish directorships due to exceeding the cap. This process is complex and time-consuming, as it involves identifying suitable candidates, conducting due diligence, and ensuring a smooth transition of knowledge and responsibilities. A five-year transition period would provide issuers with ample time to execute these plans effectively.

2. Board Continuity and Stability:

Ensuring board continuity and stability is crucial for the long-term success of issuers. A longer transition period allows issuers to phase out overboarding INEDs gradually, minimizing disruption to the board's operations and strategic direction. This approach helps maintain the board's effectiveness and ensures that the transition to new directors is orderly and well-managed.

3. Market Adjustment:

The proposed cap represents a significant change in the governance landscape. A five-year transition period would allow the market to adjust to the new requirements, enabling issuers to adapt their governance practices and policies accordingly. This adjustment period is essential for ensuring compliance and fostering a culture of good corporate governance.

We believe that extending the transition period to five years would facilitate a more effective and orderly implementation of the hard cap on INED directorships. This approach would provide issuers with the necessary time to plan and execute succession strategies, ensuring board continuity, stability, and alignment with good corporate governance standards.

<u>Question 7</u>

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.

<u>Question 8(a)</u>

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.

Reasons:

While we understand the intention behind this proposal, we have several concerns that we would like to share:

1. Lack of Direct Relationship:

There is no direct relationship between the nine-year hard cap and the independence of INEDs. Board independence is influenced by various factors, including the composition of the board, the effectiveness of the nomination committee, and the overall governance practices of the issuer. The length of tenure alone does not necessarily ensure or undermine an INED's independence.

2. Value of Long-Serving INEDs:

We suggest that allowing one-third of the total INEDs of an issuer to stay for over nine years. This can provide valuable continuity and experience to the issuer. Long-serving INEDs can offer deep industry knowledge, and strategic insights that are invaluable to the board's decision-making process. This approach balances the need for board renewal with the benefits of retaining experienced directors.

We believe that the proposed hard cap of nine years may not be the most effective approach to strengthening board independence. We recommend a more flexible approach that allows for one-third of long-serving INEDs to continue contributing to the board, thereby maintaining a balance between continuity and renewal.

We have also received feedback from our members who believe that the maximum number of INED services should also be a matter for the listed issuers and their shareholders to decide, rather than being dictated by a regulatory mandate. They contend that while tenure limits can be beneficial in ensuring fresh perspectives and preventing stagnation, the specific duration should be determined by the issuers and shareholders based on the unique circumstances and needs of each board.

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.

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 propose extending the transition period to five years. This longer period would give issuers enough time to conduct thorough succession planning and ensure board continuity. It would allow for a gradual and orderly transition, minimizing disruption to the board's operations and strategic direction. This reasoning is similar to what we mentioned in our reply to Question 6B.

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.

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)?

Yes

Please provide reasons for your views.

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.

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.

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.

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.

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.

<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?

Yes

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?

Yes

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?

Yes

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?

Yes

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?

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Yes

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?

Yes

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?

Yes

Please provide reasons for your views.