

## CONSULTATION RESPONSE

### HKEX Consultation Paper: Review of Corporate Governance Code and Related Listing Rules

Please state whether your response represents the view of your company/organization or your personal view.

- Company/Organization view  
 Personal view

**Company/Organization name:**

**Company/Organization type:**

- Accounting Firm  
 Corporate Finance Firm / Bank  
 HKEX Participant  
 Investment Manager  
 Law Firm  
 Listed Company  
 Professional Body / Industry Association  
 Other

**Contact Person:**

Mr./Mrs./Ms.

Name:

Job Title:

Phone Number:

Email Address:

**Disclosure of identity**

HKEX may publish your identity together with your response. Respondents who do NOT wish their identities to be published should tick the box below, otherwise please click "Next":

- I/We do NOT wish to disclose my/our identity to the members of the public.

### Question 1

Do you agree with our proposal to introduce a new CP requiring issuers without an independent board chair to designate one INED as a Lead INED to enhance engagement with investors and shareholders? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

While we appreciate the Exchange's initiative to encourage further engagement between listed issuers and its investors and shareholders, we respectfully submit that an "one-size-fits-all" approach to require all issuers to designate a Lead INED within their board of directors is not suitable. An introduction of the role of Lead INED would essentially create an additional sub-class of directors within INEDs and it may create confusion among INEDs with respect to their roles and responsibilities, as well as whether such Lead INED has a supervisory role over the other INEDs. Given INEDs sit in various board committees of an issuer (such as audit committee or remuneration committee) with specific functions and duties and the rarity for an INED to sit in all of the committees, we consider the designation of a Lead INED to be the issuer's primary channel of communication with shareholders may not be effective as such Lead INED may not be in all committees and therefore not be in the best position to communicate with shareholders in certain particular topics. Such additional duties for Lead INEDs may also increase the difficulty for issuers to recruit potential INEDs to join their board of directors.

We submit that issuers on the Exchange currently maintain shareholders communication policy and if the Exchange's primary goal under this proposal is to enhance engagement with investors and shareholders, it could consider setting out clear standards and expectation on such topic (such as requiring issuers to include suitable communication channel for shareholders to provide feedback to the issuer's board) for the issuer to include such requirements into its relevant policy.

### Question 2

Regarding continuous professional development for directors, do you agree with our proposals to:

- (a) Make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours?
- (b) Require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment?
- (c) 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?

- (d) Specify the specific topics that must be covered under the continuous professional development requirement?

Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

We appreciate and agree with the Exchange on its initiatives to promote continuous professional development for directors. With that said, for proposal (b) in this question, the Exchange may consider designating a more detailed and specific list of required training topics that the First-time Directors should receive (such as a list of specific topics built on areas discussed in paragraph 47 of the consultation paper), instead of mandating the number of training hours required. Issuers and their professional advisers would then be able to provide trainings to such directors on the focused topics and issues that the Exchange expects a First-time Director to be able 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? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

### Question 4

Do you agree with our proposal to upgrade the current RBP 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? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

**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? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

We respectfully submit that the requirement of a broad skills matrix may not provide meaningful additional information to an issuer's investors and shareholders as the determination of the skills mix (including the scoring of the skills) is a subjective assessment and such determination would vary among listed issuers. Such assessment results may therefore be arbitrary and do not provide objective information to investors and shareholders.

Moreover, we believe it is more beneficial to issuers and their shareholders to allow flexibility in how issuers assess the suitability and effectiveness of their boards based on their specific circumstances. Requiring a specific way for companies to consider board effectiveness (i.e. through a skill matrix) may generate unintended consequences by leading issuers to only focus on a matrix rather than the substantive qualities of directors. A board with all skills boxes checked may not necessarily be a board that provides sufficient guidance and supervision to the issuer or a board that properly safeguards shareholders' interests.

**Question 6**

In relation to our proposal to introduce a "hard cap" of six listed issuer directorships that INEDs may hold, do you agree:

- (a) With the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers?  
 (b) With the proposed three-year transition period to implement the hard cap?

Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

**Question 7**

Do you agree with the proposal to introduce a new MDR to require the nomination committee to annually assess and disclose its assessment of each director's time commitment and contribution to the board? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

**Question 8**

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:

- (a) With the proposed hard cap to strengthen board independence?  
 (b) That a person can be re-considered as an INED of the same issuer after a two-year cooling-off period?  
 (c) With the proposed three-year transition period in respect of the implementation of the hard cap?

Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

We respectfully submit that a director's independence should not be defined by his or her tenure on the board of directors. In addition to the length of his or her tenure with an issuer, the qualifications of an INED should be assessed on a case-by-case basis with reference to the director's business acumen, experience in related industries and comparable companies, professional qualification, international business exposure and the nature of the businesses of the issuer. INEDs with a significant tenure with an issuer would also have gained in-depth insight into the issuer's operations and initiatives and therefore are well-positioned to offer their perspectives and advice for discussion at the board of directors and beyond. On this basis, we do not consider a "hard cap" to be appropriate to determine an independence of a director and issuers should have the flexibility of making and disclosing such assessment and allow its shareholders to determine whether to re-elect such director for any further terms.

**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? Please provide reasons for your views.

- Yes  
 No

Please give 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? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

We respectfully submit that given MB Rule 13.92 has already mandated an issuer to have a gender-diverse board, it is not necessary to specifically require an issuer to have at least one director of a different gender on the nomination committee as there are a wide diversity of established factors and qualities that the nomination committee consider in assessing a potential director candidate, and gender is just one of the factors. Sufficient flexibility should be given to an issuer to determine the composition of the nomination committee based on its own circumstances and needs. Directors should also be offered the flexibility to determine which committee(s) they wish to join, and no director should be made to join a particular committee that he or she has no interest or particular experience in, just for the issuer to satisfy this proposed requirement.

*Note: MB13.92 states that the nomination committee (or the board) shall have a policy concerning diversity of board members, and shall disclose the policy on diversity or a summary of the policy in the corporate governance report. Board diversity differs according to the circumstances of each issuer. While diversity of board members can be achieved through consideration of a number of factors (including but not limited to gender, age, cultural and educational background, or professional experience), the Exchange will not consider diversity to be achieved for a single gender board.*

**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)? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

We generally appreciate the Exchange's initiative to expand the requirement for issuers to maintain a diversity policy to cover their workforce (including senior management). We also agree with the Exchange that there will be different diversity considerations at the general workforce level, as compared to the board level, because there are a wide variety of factors and considerations (such as the relevant industry and the job nature) that may affect an issuer's recruitment exercise of its general workforce. On this basis, we are agreeable for issuers to disclose the factors and considerations that they consider in evaluating candidates (including its senior management). However, we consider that no specific targets should be included in such policy as the issuers should be provided with the flexibility for the operations of their business.

**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? Please provide reasons for your views.

- Yes  
 No

Please give 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? Please provide reasons for your views.

- Yes  
 No

Please give 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 MB Rule 13.92(2) in Appendix I? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

**Question 15**

Do you agree with our proposal to:

- (a) emphasis 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; and
- (b) 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.

- Yes  
 No

Please give reasons for your views.

**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? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

**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? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

While we generally agree for issuers to disclose its dividend policy and to confirm in their annual report that all dividend decisions made by the board during the reporting period were made in accordance with such policy, we disagree the proposals where issuers are required to disclose its reason in (i) declaring a dividend which is of a materially different rate than the previous correspondence period; or (ii) not declaring a dividend at all. There are a wide variety of reasons and factors that the board of an issuer may take into account in making the dividend decision, such as the issuer's capital management plans, forecasts or potential acquisitions that it may enter into. Such reasons and factors could be commercially sensitive to the issuer and therefore the board should be provided with the discretion in deciding whether to disclose such specific reasons. We consider that it is sufficient for an issuer to disclose that the dividend policy has been complied with in making the dividend decision.

On this basis, we respectfully submit that the disclosure of the detailed reason for such non-declaration or deviation of dividend should be a voluntary decision of the issuer as part of its investor relations strategy instead of a mandatory requirement without any flexibility.

**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? Please provide reasons for your views.

- Yes  
 No

Please give 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? Please provide reasons for your views.

- Yes  
 No

Please give 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? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

### 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? Please provide reasons for your views.

- Yes  
 No

Please give 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<sup>1</sup> as set out in paragraphs 182 to 183 of the Consultation Paper? Please provide reasons for your views.

- Yes  
 No

Please give reasons for your views.

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<sup>1</sup> See Question 6(b) (in respect of overboarding) and Question 8(c) (in respect of Long Serving INEDs) of the Consultation Paper.