



THE HONGKONG AND SHANGHAI HOTELS, LIMITED
香港上海大酒店有限公司

Online Submission

The Stock Exchange of Hong Kong Limited

**Consultation Paper on
Review of Corporate Governance Code
and Related Listing Rules**

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Designation of lead INED

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?

~~Yes~~/ No

Please provide reasons for your views.

We think that the proposed changes to designate one INED to be the lead INED are misguided.

While we agree with the rationale of strengthening communication among INEDs or between INEDs and the board and shareholders, we believe that there is a high risk of different tiers of INEDs arising out of the designation of a "Lead" INED. We appreciate that the designation may not be intended to create a separate or higher level of responsibility, however, we think that such designation will inevitably lead to a perception of different levels. The perception would arise that the Lead INED must be the first point of contact in any event, to the exclusion of others, potentially hampering the free communication with the other INEDs or with the wider board, the investors and the shareholders. Moreover, the law does not differentiate between directors in relation to their responsibilities – introducing the concept of a lead INED however, risks introducing such differentiation.

Mandatory director training

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 / ~~No~~

Please provide reasons for your views.

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~~/ No

Please provide reasons for your views.

We disagree with an overly prescriptive approach that sets an arbitrary number of 24 hours of training within 18 months following the appointment. Directors are chosen based on their experience irrespective of whether they have previously been a director of a listed entity. There would be many First-time directors who would have as good if not better knowledge of responsibility of directors, e.g. governance practitioner or specialists in the specific business who understand the risks and responsibilities. It would be more appropriate to ensure a tailor-made training program suitable to the experience and needs of the specific director who is appointed, as opposed to undertaking a one-size fits all approach which may lead to needless training and a waste of the director's time.

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~~ / No

Please provide reasons for your views.

Please refer to the response in 2(b) - as mentioned, directors are appointed based on experience irrespective of whether they had been director of a listed entity. The proposed definition would mean that directors with considerable experience (including potentially decades of experience) would be classified as "First-time" simply because their experience has not been with a listed entity in the prior three years.

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~~ / No

Please provide reasons for your views.

Listed entities should be given the flexibility to choose the topics covered for the training. This should reflect the needs and requirements of the listed entity and the directors themselves – it would not be appropriate to be prescriptive about this. Instead, listed entities should retain the ability to choose the training relevant to their specific circumstances.

We are also concerned that an overly prescriptive approach to training will result in this being seen as a mere box-ticking exercise, instead of the important part of being a director that it is

– this is because specific mandatory training may not in fact be relevant to the individual directors.

Question 3

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

Yes / ~~No~~

Please provide reasons for your views.

Board Performance Review

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?

Yes/~~No~~

Please provide reasons for your views

Board Skills Matrix

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?

Yes/~~No~~

Please provide reasons for your views

Overboarding INED and directors' time commitment

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/~~No~~

Please provide reasons for your views.

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/~~No~~

Please provide 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?

Yes/~~No~~

Please provide reasons for your views

Independence of INEDs

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~~/ No

We do not agree with setting an arbitrary timeline. Whether a director is independent or not is one of mindset and not tenure. It is possible for a director to no longer be independent, say, five years into their tenure, and likewise it is possible to be a director for 15 years yet remain independent. INEDs are independent of management and controlling shareholders and being familiar with the business because of tenure does not render them incapable of giving independent or objective contribution to the board. In fact, familiarity often allows them to make better objective judgement on the business. Similarly, a period of two years to regain one’s independence does not reflect reality – again, independence is not measured by the passing of time, but by the state of mind.

In addition, the pool of competent INEDs is not necessarily a large one – to restrict perfectly independent and capable INEDS from serving as such because of an arbitrary time period would be detrimental to the governance of the listed issuer.

INEDs can also provide much needed continuity for listed issuers, especially for those with frequent management changes. To restrict an INED’s tenure to 9 years across the board would mean to potentially add instability to the governance of 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~~/ No

Please provide reasons for your views.

Please refer to the response in 8(a)

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~~/ No

Please provide reasons for your views.

Please refer to the response in 8(a). Should a hard cap be introduced, we believe that the transition period should be at least 5 years.

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/~~No~~

Please provide reasons for your views

Board and workforce diversity

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/~~No~~

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/~~No~~

Please provide reasons for your views.

We agree, but would note that gender diversity is a somewhat limited way of looking at diversity in the 21st century.

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/~~No~~

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/~~No~~

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 MB Rule 13.92(2) in Appendix I?

Yes/~~No~~

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/~~No~~

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/~~No~~

Please provide 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?

Yes/~~No~~

Please provide reasons for your views

Dividends

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/~~No~~

Please provide reasons for your views.

Other minor rule amendments

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/~~No~~

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/~~No~~

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/~~No~~

Please provide 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?

Yes/~~No~~

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 151 as set out in paragraphs 182 to 183 of the Consultation Paper?

~~Yes~~/ No

Please provide reasons for your views.

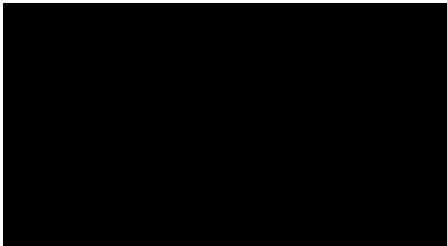
We do not agree with the proposed implementation date and think that this should be extended by two years to financial years commencing on or after 1 January 2027. While some of the proposed changes are straightforward to implement, others demand more preparation, and sufficient time should be granted to listed companies to address them. This would also mean that the proposed Rules on Long Serving INEDs (which we disagree with as set out in our reply to question 8) would apply from 1 January 2030 onwards (taking into account the three-year transition period), which would be the minimum expected to adjust to such a wide-ranging change

If there are any questions, please feel free to contact the undersigned at [REDACTED] or [REDACTED].

Yours sincerely

For and on behalf of

The Hongkong and Shanghai Hotels, Limited

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