



16 August 2024

**BY EMAIL ([response@hkex.com.hk](mailto:response@hkex.com.hk))**

Hong Kong Exchanges and Clearing Limited  
8th Floor, Two Exchange Square  
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Dear Sirs

Re: Consultation Paper “Review of Corporate Governance Code and Related Listing Rules”

We are pleased to have the opportunity to respond to your consultation paper “Review of Corporate Governance Code and Related Listing Rules”.

**Preamble**

The consultation paper is concerned about a wide range of board measures, including the appointment of INEDs. In our view, any new board measures should aim to fix specific problems, enhance board performance and efficiency, and ultimately raise shareholder value. However, the proposed changes about INEDs appointment are unclear in what they are trying to fix and do not bring apparent benefits.

With respect to the proposed changes about INEDs, we do not see any causal relationship of INED’s tenure and the number of directorships one holds to company performance. There is no evidence that long serving INEDs or those with higher number of directorships (overboarding) have deteriorated company performance or diminished shareholder value. If implemented, the new measures would interfere with the issuers’ choice of independent directors who best suit their needs. The proposed creation of a Lead INED would complicate the board structure and duplicate existing corporate functions.



It has been suggested that the proposed changes are to raise Hong Kong's corporate governance level to the international level so as to maintain its position as an international financial centre. While other markets have similar requirements, but with respect to long serving INEDs and Lead INED, UK is "comply or explain", and Australia is "voluntary" only; as for overboarding, UK is also "comply or explain". Hong Kong would be the most stringent in these respects if the proposals are adopted. Whether that will make Hong Kong more favourable with investors is yet to be seen but harsh requirements might also deter potential listed companies from coming to Hong Kong. The effects on Hong Kong's overall positioning is unclear.

We agree that corporate governance is most important, but corporate governance is multi-faceted and INED tenure and overboarding are not the only factors that matter, and by no means the determining ones.

Besides, we question the timing of the changes. Hong Kong is suffering from a prolonged subdued economy and stock market activities are still hovering at a relatively low level. Many issuers are struggling. The proposed changes inevitably increase the costs and administrative burden for issuers, particularly small- and medium-sized ones. Any new measures should withstand the cost-benefits test. However, in this case, the costs outweigh the benefits.

All in all, we do not see compelling reasons that could make these changes justified. If the proposed changes concerning INEDs are to be adopted, exemptions and longer transitions need to be provided.

Against this background, we will proceed to answer the questions list out in the consultation paper:

### **Question 1**

We disagree with creating the position of a Lead INED. The expected role and functions of Lead INED is problematic. If the role of Lead INED is to communicate and engage with investors, there are existing communication channels, such as the investor relations functions. It is inappropriate to name a single director to shoulder the work of investor communication or engagement. It should be the work of the entire board. INEDs being non-full time with the company is not in the best position to answer investors' questions relating to business or operation should they arise.



Some investors suggested that when it comes to sensitive matters such as Connected Party Transactions, they would prefer speaking to an INED rather than an Executive Director or the management. This is a prejudicial view against the latter. All directors, executive or independent, work for the interests of the company. They are subject to the same legal and regulatory oversight and would be held accountable for providing misleading information or any wrongdoings.

If indeed investors would need to communicate with an independent director, they can request to speak to any of the independent directors and there is no need to specify a single individual director for this purpose.

Besides, having a Lead INED would give the wrong impression that he or she represents the board or that they assume superior authority. Directors are jointly and severally responsible for the board's actions, and they should operate as equals but not in a hierarchical manner.

Directors may also be reluctant to take on this role due to the perceived extra power and extra liability exposure should the company become a subject of investigation.

If this proposal is to be adopted, we advised it be applied to larger capitalised companies only, the threshold of which can be further determined. Also, the Exchange should explain and allay the extra liability concern.

### **Question 2 and Question 3**

We do not have major concern about these proposals related to directors training, although we would like to say that many "First-time" directors are professionals like lawyers and accountants, and they possess the necessary knowledge of being a company director. The Exchange should make clear that for "first-time" directors holding professional membership and having to fulfil their own CPT requirements, the hours gained there can be counted towards the 24-hour requirement.

### **Question 4**

We have no particular concern about the proposals related to Board Review.

### **Question 5**

We have no particular concern about the proposals about board skills matrix.



### **Question 6**

As pointed out in the Consultation Paper, there are only 23 Overboarding INEDs and only five are holding ten or more directorships. As overboarding is not a major issue of our market and the situation is on the decrease, we doubt the necessity of introducing a new Listing Rule restriction.

Under existing rules, issuers need to spell out in the circular to shareholders why the board believes any proposed director is considered to be able to devote sufficient time to the board. Shareholders can make their own judgement as to the suitability of the individual director.

Whether someone could devote sufficient time does not entirely depend on the number of directorships. For example, between a professional INED who has no other full-time occupation and someone who has heavy work commitment other than the directorship, very different work results can be produced, disregard the actual number of directorships held.

As in many other things, discipline is what matters. INEDs are fully aware of their duty to the company and the liabilities of failing them, especially after the mandatory director training. Therefore, we disagree in principle with such restriction. Shareholders should be allowed to make their choice of directors based on a whole set of considerations but not bound by the number of directorships.

Having this restriction may also discourage the development of professional INEDs in Hong Kong. Professionals like lawyers, accountants or even ESG specialists may wish to pursue independent directorship as a full-time occupation. They have the capacity to serve more issuers and contribute their experience and expertise. Imposing a restriction would inhibit this development.

That said, in the event that the proposed changes are adopted, a longer transition period no shorter than 6 years should be given to allow issuers adequate time to identify suitable replacement.

### **Question 7**

We do not have particular concern about the annual assessment by the nomination committee but wish to add that as for the disclosure of each director's time commitment and contribution to the board, personal contribution is hard to be pinpointed and we do



not want to see a situation where directors are compared among themselves. Clarification or guidance from HKEX about the extent of this disclosure is perhaps necessary.

### **Question 8**

We oppose to the introduction of a “hard cap” of nine years on the tenure of INEDs. In principle, shareholders should be allowed to elect shareholders based on merit. Any restriction artificially imposed is not appropriate.

In practice, INEDs who serve more than nine years (long serving INEDs) accumulate sufficient understanding about the company they serve and knowledge of the industry it is in, and therefore be able to make valid recommendations to help the company business. The familiarity with the company’s management structure and personnel also allows them to ask critical questions to the right persons.

The Exchange’s proposals that a long serving INED can be designated non-executive means that a new INED would need to be appointed in some cases to meet the 1/3 requirement. Doing so will inevitably enlarge the board size and that may not be the most effective in running board business.

The saying that long serving INEDs will lose independence is not substantiated. Independence is a mindset. Directors are bound by a wide range of laws, rules and regulations, and their actions are open to scrutiny. Any directors who violate shareholders’ interests will be subject to disciplinary or even legal actions. There is no evidence that long serving directors are neglecting their monitoring duties in the board or that they are biased towards major shareholders in transactions. If there are proven cases of such, disciplinary or legal actions can be taken by all means. But in the absence of clear evidence of wrongdoings, we do not support new Listing Rule restrictions.

While a new director may bring fresh perspective, it should be not achieved by forcing out valuable long-term directors with an artificial timeline. Issuers should be trusted with their judgement of when a new director is needed of their own accord.

That said, in the event that the proposed changes are adopted, a longer transition period no shorter than 6 years should be given to allow issuers adequate time to identify suitable replacement.



**Question 9**

We do not have objection to disclosing tenure of each director. Such information is already publicly available.

**Question 10-14**

We have no particular concerns about the proposals regarding board and workforce diversity, except the one regarding having one director of a different gender on the nomination committee. The stated objective of this new requirement is to promote gender diversity, but we do not see the designation of a female director on the Nomination Committee is necessary in advancing this objective. The issuer is required to conduct annual review of the board diversity policy and make disclosure accordingly. Any members of the board, regardless of gender, should be able to follow the diversity policy and act accordingly. A board should have the discretion to assign responsibilities to directors based on his/her particular skillsets and workload but not gender.

**Question 15 - 16**

We have no particular concern about the proposals regarding risk management and internal controls.

**Question 17**

We have no particular concern about the proposals regarding dividends.

**Question 18**

We have no particular concern about the proposals regarding record date.

**Question 19**

We have no particular concern about the proposals about modified auditors' opinions.

**Question 20**

The new wording in the Note to Code D.1.2 change the word “may” to “should” where it says “the information provided should include monthly management accounts and management updates...” The new wording “should” is more definitive than “may”. We are concerned that the provision of monthly management accounts may not be feasible as it takes longer time of preparation and reconciliation and the accounts may not be available in time. We suggest keeping the word “may” in order to provide a bit more flexibility. Provision of management updates is acceptable.



**Question 21**

We have no particular concern about the proposals regarding the alignment of nomination committee requirements with existing audit committee and remuneration committee requirements.

**Question 22**

In the event that the proposals about long serving and overboarding INEDs are to be adopted, a longer transition period no shorter than 6 years should be given to allow issuers adequate time to identify suitable replacement. We agree to the 1 January 2025 implementation date for the other changes.

Yours sincerely

