

Submitted via Qualtrics**Slaughter and May****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?

Please provide reasons for your views.

We agree with the principle behind having a Lead INED where the Chairman is not an independent non-executive director if there are no alternative channels of communication with shareholders, although all INEDs should be available to be contacted by shareholders at any time under the existing regime. However, this would involve more duties on the Lead INED, thus where the pool of INEDs is insufficient to fulfil these requirements, there could be practical difficulties with fulfilling this requirement. Thus, having this provided for as a Code Provision would allow issuers more flexibility in considering how this could be given effect based on their individual circumstances.

Further guidance on the role of a Lead INED, in particular practical examples of what function is expected to be performed by Lead INEDs on the Board and to the shareholders would be welcomed.

We assume a designation or change of a Lead INED would constitute an “change to any important functions or executive responsibilities of a director” and would accordingly require an announcement to be published pursuant to Rule 13.51(2) of the Listing Rules, but it would be helpful if the HKSE could clarify this.

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.

We agree with the Exchange that continuous professional development is essential for directors. Given that directors have different background and experience, it would be for the directors to ensure that they are fully apprised of their duties as a listed company's director, such that specifying a minimum number of training hours may be counter productive.

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?

Please provide reasons for your views.

We agree with the rationale of generally improving the training of new directors, but have received comments from clients that this may be too onerous and too drastic a change from the current market practice of providing induction training to new directors and continuous training to all directors. In terms of each of the five topics suggested, the HKSE may consider if two hours each would be sufficient, over the course of 18 months.

It would be helpful if: (i) training for newly appointed directors given by internal compliance team; and (ii) non-interactive E-learning videos (including those provided by the Exchange from time to time on the Exchange's website) on the specified topics, can count towards the above training.

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?

Please provide reasons for your views.

We agree with the rationale. However, the proposal in paragraph 43 of the Consultation Paper for the required number of hours to be reset where a new director ceases to be a director of the issuer before reaching the total number of training hours, and subsequently joins the board of another (or the same) issuer should build in the ability to count the earlier training unless three years have elapsed since the training on a relevant topic was received.

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?

Please provide reasons for your views.

We are aligned with the Exchange that continuous professional development should cover a variety of topics relevant to the directors' role and responsibilities. However, we query whether prescribing specific topics under the Rules may reduce issuers' incentive in providing trainings which are most tailored to their own needs and current trends at the time. For example, issuers may wish to conduct thematic training focused on a few areas in one year and different areas in the next year, rather than touching on the same topics in every financial year.

Some of our clients have also reflected that they hope to be given more flexibility in determining the appropriate topics for the training.

We would invite the Exchange to consider including the core training topics as a recommended best practice under the Corporate Governance Code such that issuers will recognise the importance of the topics but will still have some flexibility to consider the appropriate combination of topics for their own.

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.

We agree with the rationale for the proposal.

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.

We agree with the rationale for the proposal. However, more guidance is required as to what the review is expected to cover, as paragraph 65 of the Consultation Paper seems to suggest it is more about a review of the composition of the board and it is not clear how this can be demonstrated to relate to the performance of the board and the Company.

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

Please give reasons for your views.

We agree with the rationale for the proposal. We have received client feedback that the existing skill matrix of the board to be sufficiently clear from the current disclosure made by issuers under the existing Listing Rule requirements such as Rule 13.51(2) and paragraph 12 of Appendix D2, and that INEDs should not necessarily be expected to possess diverse skills, as their roles are mainly focused on ensuring good corporate governance of the listed issuers.

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?

Please provide reasons for your views.

We agree with the principle behind the proposal, but would suggest that the Exchange takes into account the views of issuers regarding the level of the cap, particularly in light of the package of reforms being proposed which will impact the number of INEDs that may need to be replaced.

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?

Please provide reasons for your views.

Please see above comment in Question 6(a) which also applies to this question.

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?

Yes

Please provide reasons for your views.

We agree with the rationale for disclosing a summary of this assessment and more transparency in this regard is welcomed in principle. However, we have received client feedback that the disclosure of a director’s time commitment and contribution in a quantitative manner is not practicable as a director’s contribution to the board should not be measured by the amount of time devoted by the director and instead, the focus should be on whether the board as a whole is able to function effectively to provide value to shareholders.

We would propose a drafting change to the Note to MDR paragraph E(d)(iii) to refer to “major consultancy work” as some consultancy work may not involve significant time commitment.

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?

Please give reasons for your views.

We appreciate the SEHK's regulatory intent behind the proposal and agree with the need for INEDs to put forward an independent voice for the benefit of the company and minority shareholders.

However, we have received feedback from clients, that the "hard-cap" would create practical difficulties for, and in some cases even detriments to, issuers. For example:

- Removing an INED solely due to tenure may deprive the Board of the most suitable talents. An issuer may have to replace high quality (and in fact independent) INEDs with candidates whose skillset or experience are less appropriate for the issuer due to the relatively smaller pool of experienced candidates in Hong Kong for specific industries. It should also be acknowledged that it takes years to build up a strong understanding of an issuer's business and culture, and issuers should be able to maximise an INED's experience where they remain independent.
- The proposal may create a negative impact on board effectiveness and corporate governance. For some issuers, the proposed rule will result in losing multiple INEDs around the same time, potentially impacting continuity and balance within the board – particularly where the board comprises all or a majority of new INEDs who may still be undergoing a period of adaption with the company's values, culture, management style and targets. A drastic change to a number of board members (noting that issuers which needs to replace all INEDs will replace at least one-third of the members of the board) will certainly affect board dynamics. This risk may be exacerbated by the fact that 31% of the issuers will be affected by this proposal.

On the other hand, an INED's independence may not necessarily be compromised by the length of their service. An INED who has served an issuer for a longer period may be more able to speak their mind and question the decisions of the board given their deeper knowledge of the issuer's business and greater familiarity with the other board members.

We note in respect of the tenure of INEDS, Glass Lewis and Blackrock refer to a hard cap of 12 years rather than 9 years and consideration may be given to whether the hard cap (if it were to be implemented) should apply to a longer period.

We note that the US do not impose a hard cap at all, such that consideration should be given to how Hong Kong may remain competitive in attracting issuers.

We would invite the Exchange to consider retaining sufficient flexibility for issuers to determine independence (with the nine-year tenure as one of the factors but not the overriding factor) and the right fit for the board composition. The Exchange may consider allowing the hard cap to be rebutted based on the facts and circumstances of the issuer and the INED concerned, as seen for example in the UK regime.

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?

Please provide reasons for your views.

Please refer to our response to Question 8(a) above.

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?

Please provide reasons for your views.

Please refer to our response to Question 8(a) above.

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.

We agree that this would be helpful to shareholders' understanding of the board.

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.

This is conducive in bringing a different perspective to the nomination committee.

We have received client feedback that this is not essential if there is already a reasonable level of gender diversity on the board as a whole.

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.

We agree with the rationale for the proposal.

We would like to clarify whether the issuer is required to publish the workforce diversity policy (or a summary of the policy) on the Exchange's website and/or the issuer's own website.

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.

We agree with the rationale for the proposal.

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.

We agree with the rationale for the proposal.

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.

We agree with the rationale for the proposal.

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 with the rationale for the proposal.

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.

We agree with the rationale for the proposal.

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.

We agree with the rationale for the proposal.

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.

We agree with the rationale for the proposal.

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.

We agree with the rationale for the proposal.

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.

We agree with the rationale for the proposal.

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.

We appreciate the Exchange clarifying the expectation on the scope of monthly updates. However, we believe that the CP D.1.2 (as to be amended by the proposed changes to add “financial and operating” before “performance”) is sufficiently clear that the monthly update should cover the issuer’s financial and operating performance and prospects and should be in sufficient detail to enable the directors to discharge their duties. We therefore query whether it would be more appropriate to provide flexibility to the issuers to determine the contents of the monthly updates based on the above principle rather than prescribing the contents (e.g. monthly management accounts) in the CG Code (which would require issuers to explain any deviation in the CG report), considering that different boards may have different management style and established reporting system, especially for issuers with multiple subsidiaries where monthly management account updates may not be practicable or the best use of internal resources.

We have received client feedback that any significant matter which warrants the board’s attention should have already been reported at a board meeting or separately communicated to the board in a timely manner without waiting for the monthly updates and thus having monthly management accounts update may not create any additional value.

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.

We agree and noting that this is in line with the current guidance under the FAQ.

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?

Please provide reasons for your views.

Please see our comments on long-serving INEDs and over-boarded INEDs above.

We would like to clarify whether secondary listed issuers will be waived from compliance with the proposed new Listing Rules (noting secondary listed issuers are automatically waived from compliance with the CG Code).