Submitted via Qualtrics

Latham & Watkins LLP

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?

No

Please provide reasons for your views.

It is generally accepted that INEDs play a significant role in protecting the interests of a listed company and its minority shareholders. INEDs bring an independent perspective to the board, free from potential conflicts of interest, and provide critical oversight and counterweight to executive directors. They contribute to the board's diversity of thought and experience. In general, the involvement of INEDs may enhance corporate governance and shareholder communication.

It does remain the case though that the leadership of a typical Hong Kong listed issuer lies with the chairman (who typically is an executive director） and heads up the senior management team and would have the most in-depth knowledge of the operations of the company, and would therefore be the natural focus point for any investor and shareholder engagement. Introducing a Lead INED may create confusion regarding the delineation of responsibilities and authority between the chairman and the Lead INED, and potentially distract from the chairman's role, which may ultimately not be in the best interests of having a well-functioning board. In addition, there are inherent difficulties in finding an appropriate candidate who meets the expertise required of an INED for a listed issuer while also being adept at communicating with shareholders. Hiring an INED purely for investor communication may result in this role being a mere formality, distracting him/her from the multitude of other roles and responsibilities that an INED is meant to play and may not be in the best interest of the listed issuer and its shareholders as a whole.

If the appointment of a Lead INED is deemed necessary, it is suggested that the Exchange consider adopting this mechanism in limited situations. For example, the Singapore Code of Corporate Governance provides that a lead independent director is required to provide leadership in situations where the chairman is conflicted, and be

available to shareholders where they have concerns and for which contact through normal channels of communication with the chairman or management is inappropriate or inadequate. Paragraph 69 of the Corporate Governance Code Guidance issued by the UK Financial Reporting Council enumerates circumstances where the senior independent director may intervene, including: (1) there is a dispute between the chair and chief executive; (2) shareholders or non-executive directors have expressed concerns that are not being addressed by the chair or chief executive; (3) the strategy is not supported by the entire board; (4) the relationship between the chair and chief executive is particularly close; (5) decisions are being made without the approval of the full board; and (6) succession planning is being ignored. The Exchange is invited to consider adding detailed guidance on the expected responsibilities of the Lead INED and the procedure for their appointment.

If the appointment of a Lead INED is deemed necessary, it is also suggested that the Exchange consider lowering the requirement from a mandatory provision to a recommended best practice.

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 that mandatory training for all existing directors will help to mitigate risks of breaches, as disciplinary cases often arise as a result of lack of understanding of the applicable rules.

The current drafting of new Rule 3.09G states that the directors must attend trainings covering all the listed topics every year. We invite the Exchange to amend the drafting to allow a director to choose the topics among those on the list that he/she considers necessary and useful. Given that different directors may have different skill sets, strengths, and weaknesses and the relevant topics should also tailor to the specific needs of such directors, this flexibility would enable directors to focus on areas where they need the most development, thereby making the training more relevant and effective.

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?

No

Please provide reasons for your views.

We suggest that the Exchange consider lowering the training hours from 24 hours to 12 hours. In the case of a First-time Director for a newly listed issuer, the training received by such a director during the IPO application process should be counted.

We consider that the training required under the new Rule 3.09G is necessary for all directors of listed issuers in Hong Kong. However, each director has different skill sets and should decide on their own needs for training based on the needs arising from the performance of their duties. Imposing a mandatory 24-hour training requirement for First-time Directors would be onerous for directors, who should focus their time and attention on the issuer's management and affairs. We believe that it would be more effective to allow directors to be involved in the affairs of the issuers and to decide the training they need for performing their duties. Reducing the training hours to 12 hours would still provide the First-time Directors with sufficient learning opportunities while allowing for greater flexibility based on their individual needs and circumstances.

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

Please provide reasons for your views.

For the definition of "First-time Directors", suggest adding in "consecutive" such that sub-paragraph (b) will read "have not served as a director of an issuer listed on the Exchange for a period of three consecutive years or more prior to their appointment".

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

Please provide reasons for your views.

We agree with the specific topics as set out in the proposed Rule 3.09G as these topics are critical to the knowledge and skills of directors in order to ensure that they continue to fully discharge their duties and responsibilities as directors of an issuer listed on the Exchange and to keep abreast of the latest development and changes.

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.

Yes, we agree with the proposed consequential changes to Principle C.1 and CP C.1.1.

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 proposal to upgrade the current RBP to a CP which requires issuers to conduct regulatory board performance reviews on a “comply or explain” basis. This brings us in line with the practices in other jurisdictions such as UK, Singapore and Australia although it is worth noting that the UK further requires the chair to consider regular externally facilitated evaluations. We support the proposal that issuers should also disclose details on the scope, process, and findings of the performance review. Such transparency will enable shareholders, potential investors and other stakeholders to gain a better understanding of the board’s performance, thereby allowing them to make well-informed decisions.

We acknowledge that the Exchange will provide further guidance on the areas to be covered in a board performance review. We invite the Exchange to consider adopting a similar approach to that of the UK, where the UK Corporate Governance Code Guidance outlines a non-exhaustive list of areas that may be considered as part of the board performance review. This approach would offer issuers a clear framework while

allowing flexibility to address specific circumstances, ultimately enhancing the effectiveness and comprehensiveness of the reviews.

From a practical point of view, given that the review is conducted once every two years, we invite the Exchange to consider adding a disclosure requirement on the timing of the current review and the expected time for the next review in the CG report. This would enable shareholders, potential investors and other stakeholders to understand the review timetable and have a reasonable expectation of when updates will be provided.

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?

No

Please give reasons for your views.

We disagree with the proposal to introduce a new CP requiring issuers to maintain a board skills matrix.

The current requirements already mandate the nomination committee to review the structure, size, and composition of the board, including the skills, knowledge, and experience of its members, at least annually. Additionally, when proposing the election of an INED, issuers must disclose the perspectives, skills, and experience that the individual can bring to the board. These existing provisions ensure that the board's composition is regularly assessed and aligned with the issuer's corporate strategy. Moreover, issuers would provide detailed information about the qualifications and skills of their board members in the directors' biographies set out in their annual reports, a separate skills matrix may result in duplicative information that does not necessarily provide additional value or information from the perspective of shareholders or enhance board effectiveness.

Analyzing and quantifying each skill and experience of members of the board, and drawing references to how such skills and experiences serve the purpose, values, strategy, and culture of the company, can be challenging. Corporate strategies often evolve over time in response to market needs, economic conditions, and other external factors. A change in strategy does not necessarily render the skills and experience of INEDs irrelevant. On the contrary, the diverse backgrounds and expertise of board members can provide valuable insights and adaptability, helping the company navigate through strategic shifts. Mandating a board skills matrix may not adequately capture the dynamic and contributions of the board members. Skills and experiences are often not easily quantifiable, and it may be difficult to relate experience in one industry to a

completely different industry, even though such experience may indeed serve certain purposes/ values. This complexity could lead to oversimplified or misleading representations of a board's capabilities. This may be particularly challenging for smaller companies with limited resources, as maintaining and disclosing a board skills matrix could impose an additional administrative burden and may divert attention and resources away from more critical governance activities, such as board performance reviews and succession planning.

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?

No

Please provide reasons for your views.

We uphold the principle that a director should devote sufficient time to carry out the work of the listed issuer so as to discharge his director duties. While the number of directorships in listed companies is a useful indicator for listed issuers and investors to evaluate an INED's time commitment, it is also noted that INEDs may be able to effectively manage multiple directorships due to their experience, expertise, and the nature of the companies they serve. We invite the Exchange to revisit the hard cap from the following perspectives:

- Scope of directorship: according to paragraph 86, the hard cap is limited to Hong Kong listed issuer directorships, rather than a total number of directorships in Hong Kong and overseas. This would appear arbitrary, as an individual could, on top of his/her six Hong Kong listed directorships, hold multiple directorships in overseas listed companies, which would similarly impact his/her ability to devote sufficient time to each listed company. Additionally, this seems to be a relaxation of the current Code provision, which requires INEDs to hold no more than six listed company directorships in total. Moreover, it will relax the current IPO vetting criteria where, according to Chapter 3.10 (Directors, Supervisors and Senior Management) of the Exchange's Guide for New Listing Applicants, the Exchange discourages overboarding INEDs, even if their directorships are held in companies listed outside Hong Kong.

- Cap of directorships: INEDs are not involved in the day-to-day management of the listed companies, and, therefore, we believe that they should be able to hold multiple directorships in a number of listed issuers. The number of directorships undertaken by an INED also depends on the experience, expertise, and nature of the

companies the INED serves. The governance needs and operational complexities of companies can vary significantly. Some companies may require more intensive involvement from their INEDs, while others may have less demanding governance structures. Similarly, INEDs come from diverse professional backgrounds and have varying capacities to manage multiple directorships. A hard cap does not take into account the varying demands and individual circumstances of different companies and directors, potentially excluding highly qualified and capable individuals from serving on additional boards where their expertise is needed.

- Interests of the issuer and its shareholders as a whole: when recommending and appointing an INED, the board of directors of a listed issuer should make its decision in the best interest of the issuer and its shareholders as a whole. Whether an INED candidate is suitable or not should be considered in a holistic approach, taking into account his experience, expertise, special skills, qualifications, and time commitments to the issuers, rather than solely benchmarking by the number of listed issuers that such a candidate serves. Imposing a hard cap may potentially exclude the opportunity of hiring a more appropriate INED for pure regulatory compliance reasons, and reduce the pool of available and experienced INEDs, leading to challenges in maintaining board diversity and expertise. After all, it is the listed issuer and its shareholders who should decide which INED is best suited for the issuer, and the Exchange has proposed a new MDR to require the nomination committee to annually assess and disclose its assessment of each director's time commitment (including significant external time commitments) and contribution to the board. The issuer and its shareholders should be in a better position to assess whether an INED is suitable for them.

- Secondary listed issuers: while the Consultation Paper did not specify the arrangement for issuers who are secondary listed on the Exchange, we invite the Exchange to provide guidance on the application of the new proposal to this group of listed issuers.

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?

No

Please provide reasons for your views.

If the hard cap is adopted by the Exchange after considering market feedback, we believe that the proposed three-year transition period to implement the hard cap would

be sufficient. This timeframe should provide listed issuers with ample opportunity to identify and appoint alternative INEDs to replace those who have reached the hard cap of six listed issuer directorships.

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?

No

Please provide reasons for your views.

We disagree with the proposal to introduce a new MDR for the nomination committee to annually assess and disclose each director's time commitment and contribution to the board.

We believe that the most important goal of an issuer should be to have a well-functioning board that can effectively oversee its operations and strategy. While time commitment is a good factor to consider, the assessment should be holistic, taking into account the quality of contributions, the director's expertise, and their ability to provide valuable insights and guidance. The focus on time commitment would distract from the other contributions a director may bring to a company.

In addition, time commitments may vary for different directors, depending on the responsibilities they assume. Directors are expected to respond to all fast-changing situations of the issuer, which cannot be accurately captured by a mere assessment of time commitment. The dynamic nature of a director's role means that their contributions cannot and should not be quantified solely based on the hours they dedicate.

Lastly, directors may be based all over the world and work through different means, including virtual meetings, teleconferences, and other forms of communication. This geographical and operational diversity further complicates any attempt to standardize an assessment based on time commitment.

In relation to other contributions of directors to the board, these can be extremely wide in scope and not easily quantifiable or distilled into a few paragraphs of disclosure. Therefore, having to provide a "report card", as it were, may cause unnecessary burden and pressures to listed issuers and their directors without providing much valuable information for investors and shareholders, particularly considering that there is already disclosure on the roles of each director.

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?

No

Please give reasons for your views.

We acknowledge that long-serving tenure may give rise to questions as to whether an INED is overly close to company and management, thereby affecting his independence. However, these concerns can still be addressed by other independence checks, such as assessing whether the INED is financially dependent on the company, obtaining independence confirmation from INEDs annually, etc. A comprehensive evaluation of independence should consider multiple factors rather than relying solely on the tenure of directorships.

We have received market feedback expressing concerns that independence of an INED should be determined on a holistic basis. The comprehensive factors enumerated in Rule 3.13 of the Listing Rules already provide a broad basis for determining an INED candidate's independence. Other determining factors, such as the INED's relationship with the issuer, their professionalism, and their performance, should also be considered as a whole, rather than solely focusing on the length of service. While tenure limits can help prevent entrenchment, it is equally important to recognize that long-serving INEDs can still maintain their independence and provide valuable insights based on their experience and understanding of the company.

As such, we invite the Exchange to revisit the hard cap on the tenure of INEDs and explore other mechanisms that may be effective in achieving board diversity and avoiding entrenching "group think" or other cognitive biases. For example, limiting the number of long-serving INEDs or requiring long-serving INEDs to be subject to re-election on an annual basis could be considered.

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?

No

Please provide reasons for your views.

If the nine-year hard cap is adopted by the Exchange after considering the market feedback, the two-year cooling-off period provides a reasonable balance between ensuring independence and allowing experienced directors to return to the board after a sufficient break. It is also in line with the cooling-off periods for considering independence under Rule 3.13 of the Listing Rules.

We noticed from the Exchange's illustration under paragraph 106 of the Consultation Paper that the nine-year INED tenure will continue to accrue if an INED resigns after year 3 and is re-appointed as INED after year 4 because the cooling-off period is less than two years. We invite the Exchange to clarify if the INED who resigns after year 3 is re-appointed as INED after year 5 (i.e., having satisfied the two-year cooling-off period), whether the nine-year INED tenure (i) commence from year 1 and end on year 11 (i.e. after deducting the two-year cooling-off period), or (ii) commence from year 6 (i.e., re-calculate after the cooling-off period).

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.

If the nine-year hard cap is adopted by the Exchange after considering the market feedback, the three-year transitional period provides sufficient time for issuers to identify new INEDs and allows the incumbent INEDs to serve their current term of appointment, assuming that such INEDs are appointed during 2024.

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 with the proposal, as the information of the length of tenure of each director is readily available to issuers and is commonly included in their disclosures. In addition, requiring the disclosure of director tenure will further enhance transparency, allowing shareholders, investors and other stakeholders to better assess the board's composition

and the potential impact of directors' tenure on board dynamics and independence. This practice aligns with the broader goals of promoting accountability and transparency, thereby enabling investors to make informed decision-making.

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?

No

Please provide reasons for your views.

We agree that gender diversity on the board and its committees is crucial for achieving the diversity and inclusion goals of the issuers. Including at least one director of a different gender on the nomination committee can bring unique perspectives and contribute to more balanced and comprehensive decision-making processes. This diversity can enhance the effectiveness of the nomination committee by ensuring that a variety of viewpoints are considered when making important decisions about board composition and succession planning. However, while we support the principle of gender diversity, we believe that the primary goal of the nomination committee should be to make decisions in the best interest of the issuer and its shareholders. The focus should remain on selecting the most qualified and suitable candidates for the board, regardless of gender. Therefore, we suggest that the proposal to require at least one director of a different gender on the nomination committee be considered as a RBP rather than a CP.

By lowering the requirement to an RBP, issuers would be encouraged to strive for gender diversity without being mandated to comply. This approach allows for flexibility and acknowledges that some issuers may face challenges in meeting the requirement due to the availability of qualified candidates or other specific circumstances. Encouraging issuers to adopt this practice as a best practice would still promote gender diversity while allowing them to prioritize the overall best interest of the issuer and its shareholders 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 generally agree with the proposal to introduce a Listing Rule requiring issuers to have and disclose a diversity policy for their workforce, including senior management. This requirement aligns with common practices and the Environmental, Social, and Governance reporting guide under the Listing Rules, promoting transparency and accountability in diversity and inclusion efforts.

However, it is important for the Exchange to consider that certain industries may, by nature, have a workforce that is predominantly of one gender. For example, industries such as construction or nursing may have a higher concentration of male or female employees, respectively. In such cases, achieving a balanced gender ratio may be more challenging and may not accurately reflect the issuer's commitment to diversity.

Therefore, while we support the introduction of this Listing Rule, we recommend that the Exchange to provide some flexibility for issuers in achieving their diversity goals. Issuers should be encouraged to set realistic and industry-appropriate diversity targets and to disclose any mitigating factors or circumstances that may impact their ability to achieve gender diversity. This approach ensures that the diversity policy is both meaningful and attainable, taking into account the unique characteristics and features of different industries while still promoting the overall goal of diversity and inclusion.

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 generally agree with the proposal, as this upgrade enhances transparency and ensures that issuers provide detailed disclosures on their progress towards achieving board diversity. As different issuers may be of different industry nature and at different stages of their journey to achieving board and workforce diversity, we appreciate that, even with such a new MDR in place, the Exchange does not intend for issuers to set measurable objectives with numerical targets and timelines in implementing their diversity policy.

On the other hand, the new MDR paragraph J is primarily a disclosure rule, intended to ensure that issuers provide information on their diversity policy and its implementation. While it is implicit that such disclosures can only be made after a proper review and evaluation, the MDR itself does not explicitly direct the board or nomination committee to take any specific action. It may be beneficial to retain CP B.1.3, which emphasizes the responsibility of the board or its nomination committee in conducting an annual

review of the implementation and effectiveness of the diversity policy. Alternatively, Rule 13.92 could be amended to explicitly include the requirement for the annual review by the board or its nomination committee.

By maintaining or amending these provisions, the Exchange can ensure that the annual review is not only a disclosure exercise but also a meaningful substantive evaluation process. This approach will help issuers to continuously improve their diversity practices and align with best governance standards.

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 have no objection to the proposal to require separate disclosure of the gender ratio of (i) senior management and (ii) the workforce (excluding senior management) in the CG Report. The information required for these disclosures is readily available to issuers, making it feasible to comply with this requirement. However, we also note that KPI B1.1 under Appendix C2 (Environmental, Social and Governance Reporting Guide) to the Listing Rules also requires disclosure of the total workforce by gender. To avoid redundancy and potential confusion, the Exchange may consider aligning these two sets of guidance to ensure consistency.

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 proposal, as codifying these arrangements will make it easier for issuers to follow the rule without having to refer to other guidance materials. By incorporating the specific requirements directly into the Listing Rules, issuers will have a clear and concise understanding of their obligations and the steps they need to take in the event of a temporary deviation. This approach enhances clarity and ensures that all issuers are aware of the necessary actions to maintain compliance, thereby promoting

consistency and transparency in the market. Additionally, having the rules codified in one place reduces the risk of oversight and simplifies the compliance process for issuers.

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 generally agree with the proposals outlined in Questions 15 and 16 regarding the enhancements to the risk management and internal control (RMIC) systems in the CG Code. Issuers commonly conduct annual reviews of their RMIC systems.

As mentioned in paragraph 142 of the Consultation Paper, these proposed amendments are not intended to expand the board's existing responsibilities but to serve as a reminder to boards and directors of their importance. The proposed changes aim to refine and strengthen these practices further. By mandating detailed disclosures, including the process of the review, confirmations from management, and any significant control failings or weaknesses, the proposal enhances transparency and provides investors with a clearer understanding of the issuer's risk management practices.

We appreciate that the Exchange will issue further guidance on RMIC to support issuers in complying with these requirements effectively. Moreover, we invite that such guidance should not be overly prescriptive given the wide range of listed issuers on the Exchange, not least in terms of size, number of subsidiaries, and the industries and geographies that they operate in. Given these different factors, issuers should have flexibility to determine what scope of review would be best suited for their circumstances, whilst still recognizing the need for enhancements to risk management and internal control. For example, issuers should be provided with the flexibility to determine which subsidiaries to cover, such as carving out the insignificant subsidiaries from the scope, as otherwise such exercises may become overly time consuming, unwieldly and costly.

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.

For ease of reference, we also suggest that the scope of disclosure of the review can be kept in section D.2, but a new MDR (paragraph H) should refer to section D.2. This cross-referencing will ensure that issuers are aware of the detailed requirements while maintaining the structure of the CG Code. Furthermore, the note to paragraph H could be inserted in section D.2 also to remind issuers that there is separate guidance on the scope of review of risk management and internal control issued by the Exchange, which will help them understand and implement the necessary measures more effectively, avoiding oversight of the relevant guidance.

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.

Please see our response to question 15 above.

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 generally agree with the proposal to introduce the new MDR. This additional disclosure requirement would be beneficial for investors, as it provides crucial insights into the company's capital management strategies and financial health. Investors are increasingly interested in understanding how companies allocate their profits, and a clear dividend policy can significantly influence investment decisions.

However, we note that the existing CP F.1.1 already requires issuers to establish a policy on the payment of dividends and disclose such policy in their annual reports. Additionally, the Introduction section of Appendix C1 clearly explains the "comply or

explain" basis. Given these existing requirements, it seems unnecessary to include the MDR language for issuers to disclose the absence of a dividend policy and the reasons for such an absence. Such wording, if taken out of context of the “comply or explain” basis, may be misread to suggest that issuers are permitted not to establish a dividend policy, potentially creating confusion and weakening the enforcement of the CG Code.

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.

Based on our experience and market observations, it is a requirement under the constitutional documents of listed issuers, as well as common market practice, to set a record date for certain corporate events. These events include, but are not limited to, attendance and voting at general meetings and dividend distributions. We agree that incorporating the current guidance into the Listing Rules will help all stakeholders to better understand the requirements without needing to reference various rules and guidance documents. Having it all put together into one place will avoid oversight issues and hence non-compliance.

In addition, we invite the Exchange to consider shortening the announcement deadline for announcement on book closure for general meetings, or aligning it with the notice period requirements for general meetings as stipulated in an issuer's constitutional documents. Appendix A1 (Core Shareholder Protection Standards) to the Listing Rules requires an issuer to give its members reasonable written notice of its general meetings, which shall be at least 21 days for an annual general meeting and at least 14 days for other general meetings. In FAQ16-No.2, the Exchange confirms that a PRC issuer’s minimum notice periods of 20 days for an annual general meeting and 15 days for other general meetings in accordance with the PRC company law, comply with the core standard.

It is possible that the 14-day notice period for an extraordinary general meeting is shorter than 10 business days. While an issuer may issue a separate announcement on the book closure in advance of the general meeting notice, it would be more desirable for the issuer to issue a formal meeting notice that includes more details of the meeting agenda as well as the book closure arrangement in a single document. Additionally,

issuing a separate announcement on book closure may increase the compliance workload and costs for the issuer.

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.

The recommendations from the "Review of Issuers' Annual Reports" in relation to enhanced disclosure for issuers who receive a modified auditor's opinion have been instrumental in enhancing transparency and providing stakeholders with a clearer understanding of the financial position in order for stakeholders to make well informed decisions. We agree with the proposal to codify such recommended disclosures in respect of issuers' modified auditors' opinions into the Listing Rules, as these recommendations have been in effect for several years, and it is encouraging to note that issuers generally follow them. Codifying these recommended disclosures into the Listing Rules would formalize these recommended practices, ensuring consistency and enhancing the overall quality of disclosures.

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?

No

Please provide reasons for your views.

We agree that the provision of updates on financial and operational performance to board members on a timely basis is critical for the board to understand the performance and development of an issuer and to make prompt reactions to any critical and sudden changes in the business. However, while we consider that monthly management accounts and management updates are useful information, it takes time for management to compile the necessary documents and materials, which may also delay the reporting process. We believe that the board members are best placed to determine the type of information that they should request in order to facilitate thorough and balanced consideration of issuers and making informed discussion and decision at board meetings, and the type of information and/or document required in order for directors to give a balanced and understandable assessment. The type of information and/or documents required may vary depending on a case-by-case basis depending on

the company's industry, size, strategic objectives, and current circumstances. A one-size-fits-all approach mandating specific types of information, such as monthly management accounts and management updates, may not be suitable for all issuers with different sizes and in different industries. Flexibility should be given to allow directors to tailor their information requests based on the unique needs and circumstances of the company, thereby allowing directors to determine the most relevant and useful information. This approach will ensure that directors have the necessary information to make informed decisions while avoiding unnecessary administrative burdens. In addition, directors of a company are entitled to documents and information of a company by operation of law. As such, we consider it unnecessary to specify such entitlement in the Code Provision. Alternatively, the Exchange may provide guidance by way of various training and guiding materials.

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 with the proposal to align requirements for the nomination committee, the audit committee, and the remuneration committee on (i) establishing written terms of reference and (ii) the arrangements during temporary deviations from the relevant requirements under the Listing Rules, such that if the listed issuer is unable to set up a nomination committee/ audit committee/ remuneration committee or unable to meet the relevant requirements applicable to that committee, the listed issuer shall immediately publish an announcement containing the relevant details and reasons. Aligning the requirements will ensure a uniform standard across all mandatory board committees and promote consistency in corporate governance practices. As the current arrangements during temporary deviations from board committee requirements provide transparency to the market on the details and reasons as to its temporary deviation(s), extending these requirements to the nomination committee will further enhance transparency and accountability.

However, the Consultation Paper does not specify the exclusion of the application of the amended rules to secondary listed issuers. According to Rule 19C.11, Rules 3.21 to 3.23 and Rules 3.25 to 3.27A do not apply to secondary listed issuers. By analogy and

following the same logic, Rules 3.27B and 3.27C should also not be applicable to secondary listed issuers. We invite the Exchange to further clarify this.

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?

No

Please provide reasons for your views.

We invite the Exchange to reconsider the necessity of certain amendments as suggested in our response above, in particular, the response to questions 1, 5, 6, 7, 8, 10 and 20.

If all these proposed amendments are adopted by the Exchange after considering market feedback, the Exchange may consider providing a transitional period for certain other new rules or code provisions, such as the requirement to appoint at least one director of a different gender to the nomination committee. While this transitional period could be shorter, it would be reasonable to allow issuers to comply with this requirement by the conclusion of their first annual general meeting after the effective date of the proposed amendments (especially considering the grounds set out in our response to question 10), as it may be challenging for some issuers to meet the requirement due to the availability of qualified candidates. This approach would provide issuers with sufficient time to make the necessary adjustments to their corporate governance while ensuring a smooth and orderly implementation of the new rules.