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Dear Sir/Madam,

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

On behalf of the Hong Kong Investment Funds Association, I wish to express our full support to the proposals outlined in the Consultation Paper ("CP"). Attached are comments by our members on the respective proposals (Appendix 1).

We understand that listed companies (listedcos) have flagged a range of concerns – from philosophical and high-level ones to legal and implementation issues. We believe that the concerns probably reflect a lack of understanding of the expectations of global investors in terms of fiduciary responsibility and stewardship.

There are three areas which listedcos have in particular expressed concerns, namely (1) cap the tenure at nine-year, (2) cap the number of boards at six and (3) appoint a lead INED. They have advocated that these requirements be either dropped or substantially moderated. However, from investors' perspectives, if these three proposals are only adopted partially or not adopted at all, the effectiveness of the whole package will be greatly undermined. They are the lynchpin of a robust corporate governance structure. And if we compare Hong Kong against major IFCs, and even other regional markets, the introduction of the full set of proposals means that we are only playing catch-up. We believe that the HKEX should demonstrate its commitment to enhancing the corporate governance standards by implementing the whole package.

Regarding the proposed cap of nine years, this is a benchmark that is well-accepted and commonly-adopted internationally. [e.g. Asia Pacific – Korea has a cap of six years, China six and Singapore nine]. The number takes into account the lifecycle of board directorship by striking an appropriate balance between how to ensure that the Board can optimise the contributions made by INEDs; and at the same time, ensure that there is a meaningful level of independence. It institutes a disciplined process to refresh the Board; and ensures that independent views and perspectives can be brought to the Board. This is very important to engender robust and thorough discussions, which is supportive to value creation for listedcos.

Some quarters have argued that international approaches (tenure at nine and maximum number of boards at six) should not be just transposed to Hong Kong because our market has our own unique circumstances. But Hong Kong in fact has been implementing such standards – according to the principles of appointments to Advisory and Statutory bodies under the HKSARG Home and Youth Affairs Bureau, the requirements are six-years (*i.e not more than 6 years "to ensure healthy turnover of members of advisory and statutory bodies"; and not serve on more than six advisory and statutory bodies at any one time)*. Even though the nature of the boards may not be entirely the same, the examples indicate that the approach fits well with the culture of Hong Kong and has worked well here. In fact, it shows that we can go even further.

Re the appointment of lead INEDs, we have been advocating to institutionalize it for years. But issuers have come up with a whole host of reasons. Notable ones include:

a) management teams are in a much better position than INEDs to respond to questions raised by investors as they know the company inside out;
b) this requirement may result in the INEDs inadvertently divulging more information about what a company is doing or planning, which may be price sensitive;
c) this would bring additional burdens and potential liabilities to INEDs; and
d) this would result in a hierarchy.

To investment managers, the ability to access INEDs is pivotal to help them discharge their stewardship function. The lead INEDs can play an instrumental role in giving an independent view of the workings of the Board; and ensure that the voices of independent directors, and more generally minority shareholders are heard at board discussions. This is especially important when it comes to issues where there are conflicts of interest.

In Hong Kong, there are many companies that are one amongst a host of entities of a conglomerate with multiple listings. In such cases, there may be potential conflicts of interest between a parent company and its listed subsidiary or affiliate in question. Investors would expect or hope INEDs can advocate positions and policies that would help address potential conflicts of interest to safeguard the interests of minority shareholders of the listedcos in question. Such advocacy is particularly important with regards to corporate actions such as M&A or related party transactions.

Same as listedcos, Investors should be conversant with the disclosure requirements and obligations and would not be asking for any confidential information/MNPI. What investors are interested in is not about the details of a proposal, which are in the circular, but the deliberation process of the Board about such a transaction. They wish to understand ex-poste, how those decisions were arrived at, e.g. why was a privatization proposal structured in a particular way, what were the other financing alternatives being considered and what were the key risks that the Board had considered regarding a given proposal.

Regarding the concerns of creating a hierarchy, it is more an administrative issue rather than anything else: there can be a rotation mechanism by which each INED can take turn to assume the lead role (say each for a year); or there can even be joint-lead INEDs. The key is to ensure that INEDs are ready to be open and amenable to investors.

A key theme that underlines the concerns about the HKEX's proposed changes is that there is only a limited supply of eligible candidates to take up the roles of INEDs.

Currently, there are different initiatives in the market which help listedcos to identify and attract talent for the boards – for example the Women's Directorship Programme, The Women's Foundation's Women To Watch, HKIoD's board appointment service. Singapore also has a board readiness programme.

We believe that apart from these initiatives, the HKEX can play a more facilitative role – e.g. they can spearhead other initiatives, such as:

- Run a program to nurture and support the next generation of INEDs – very often, we come across candidates who are interested in taking up the directorship roles, but do not know where to start. We believe that the HKEX can assume a more active role in helping candidates to overcome this invisible "barrier to entry";

- Set up a portal or a dedicated section on the HKEX website (which inter alia, can enable issuers to search for candidates and provide materials to support the next generation of rising directors);
- Work with universities and other relevant bodies to deliver educational programs to facilitate potential candidates to take up the role of INEDs (for new entrants), and to enhance the effectiveness of existing INEDs (for incumbents);
- Foster community and engagement among INEDs, including through peer-to-peer exchange and learning; and
- Promote public understanding of the vital roles and responsibilities of INEDs and the operations of boards. Ultimately, not only institutional investors, but retail investors should also be empowered to have a bigger voice to ensure that INEDs are accountable to them and better represent the interest of minority shareholders.

Once again, we wish to applaud the HKEX for taking up this initiative, albeit a lot of push back from listedcos. A basic question for listedcos is that if the proposed measures can be implemented in other international financial centres and even regional ones, why is it so formidable to introduce them in Hong Kong?

We fully understand that a lot of work has to be undertaken (both upfront and on-going) if the changes are to be implemented. But these should not prevail over the over-riding objective of enhancing CG, which is pivotal to foster and support the stature, the investability and liquidity of the Hong Kong stock market. We have spent the past decade debating these subjects; and if we continue to maintain status quo, the gap between us and other markets will only become wider and wider. We have reached the point where we should focus on the how rather than why. We are most happy to have dialogues with the HKEX and listedcos to share our views and our observations regarding how these measures are being implemented in other markets; and how we can action on them effectively.

Yours sincerely

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HKIFA Members' feedback re HKEX Consultation Paper on Review of Corporate Governance Code and Related Listing Rules (CG Code & Listing Rules) (August 2024)

HKEX's Proposed amendments to CG Code & Listing Rules	HKIFA's comments/suggestions
Lead INEDs A new CG Code provision to require issuers without an independent board chair to designate one INED as a Lead INED on a comply or explain basis.	• We welcome the proposal. HKIFA has long advocated for the introduction of a Lead INED concept which would bring the market in line with key capital markets. • We would also exhort HKEX to make it explicit that Lead INED responsibilities include inter alia, acting as the key contact point with shareholders, in particular minority shareholders. Global investors subject to stewardship codes and active ownership policies are increasingly seeking dialogues with the boards of listedcos and the lead independent director typically plays a pivotal role to foster meaningful communications. • Introducing the provision on a comply or explain basis is a positive first step. We hope the HKEX would come up with a road map regarding when it will turn this into a mandatory requirement, e.g. say within three years. • Meanwhile, members also encourage the separation of the roles of board chair and CEO, as this can enhance board independence and accountability. If the listedcos maintain to combine these two roles, there should be a sufficiently robust mechanism to act as a counterbalance to this combined role, in particular in key areas that include leading succession efforts, performance appraisal, and board agenda and information flow. Also, it would be useful if the HKEX can expound on its expectations as to how roles, responsibilities and authorities differ between board chair and lead INED, especially when the board chair is conflicted or has a dominant influence over the Board. • We would exhort HKEX to provide an updated table on an annual basis: for each listed co, shows whether it has an independent chair, and/or a lead INED.
Overboarding INED and directors' time commitment • A new listing rule to put a hard cap on overboarding (i.e. an INED must not concurrently hold more than six listed issuer directorships), with a three-year transition period;	• We welcome the proposal to put a cap on INED directorships but if we look at the examples of other markets, we believe that we can go further by setting a lower threshold, say 4-5. [by way of background: within the Region, we see that a number of markets have set a lower cap - from three to five.] • Ultimately, if one is to carry out the role of directorship diligently and responsibly, one needs to spend time to study the materials, to understand the company and to interact with the management as well as shareholders; so as to provide meaningful inputs. The number also

• A mandatory disclosure rule to require the nomination committee (“NC”) to annually assess and disclose its appraisal of each director’s time commitment and contribution to the board.	does not take into account that INEDs typically have other positions at unlisted companies, semi-government or non-government bodies. It would be useful to give a more comprehensive picture by providing an annual update re the directors’ other commitments (incl. inter alia at other listed companies, private cos, government and/or semi-government bodies or other bodies).
	• Specific suggestions provided by some members for consideration – for instance, the HKEX can consider lowering the cap on the number of directorships a director can hold and differentiating the types of directorships based on their nature and complexity. Examples put forward regarding the guidelines for the maximum numbers:
	  o Any non-executive director serving on more than four public company boards;
	  o Non-executive chair serving on more than two other non-executive public boards;
	  o Executive director serving on more than one additional non-executive public board.
	• We support the requirements such that shareholders can gain more insights as to how the NC makes the assessment, who sets the criteria and who makes the assessment, what are the criteria being adopted, and the evaluation results.
	• We believe that to give credence to the nomination process, the NC should be chaired by an INED.

INED tenure • A new listing rule to require a hard cap of nine years of INED tenure, with a three-year transition period. Long-serving INEDs would be able to serve on the same board after a two-year cooling-off period, with a three-year transition period; • All companies would be required to disclose the length of tenure of each director in the CG Report.	• We support the introduction of a hard cap on the length of INED tenure. Nine years is an optimal period – typically represent three terms. • We also support the disclosure of each director’s tenure in the annual report. • We recommend that at the start of an INED’s tenure, there is a vote by independent shareholders. This is a robust process that subjects the INED to closer scrutiny by independent shareholders. If an INED does not get minority support then he/she should be required to re-stand for election in the subsequent year -- in other words, the standard three-year term would not automatically apply. • Re the two-year cooling-off period, members believe that this may undermine the effectiveness of the reform especially in view of such a close-knit business community in Hong Kong. If the HKEX maintains that a cooling period be allowed, we would suggest at least three-year instead of two-year. • We would suggest immediate implementation without any transition period, i.e. this means that no re-appointment of long-tenured INEDs when the new Code comes into effect, but to

	ensure smooth transition, would not require immediate replacement of existing LT INEDs before their existing term concludes.
Board diversity There are several proposed amendments, including: • A new CG Code provision to require companies to include at least one director of a different gender on the NC; • A proposed disclosure rule to require an annual review of the implementation of the board diversity policy; • A new listing rule to require issuers to disclose a diversity policy for their workforce, which includes senior management, and to mandatorily disclose gender ratios of senior management and the remaining workforce; • Companies with single-gender boards after 31 December 2024 will be required to appoint at least one female director within three months.	• We support having at least a female director on the nomination committee. • The proposed rule requiring mandatory disclosure of how diversity policies are being implemented is also welcome. Also, it would be helpful to have greater visibility on gender ratios amongst senior management and the workforce generally. • We also support the proposal that listedcos which fail to meet the deadlines on single-gender boards be required to remedy this within three months. • One of the impediments to gender balance on boards is the lack of "board-ready" female executives. We would also urge HKEX to request listedcos to articulate how the company plans to nurture and provide support to the relevant cohorts. • Members expect listecos to have robust board succession plans, to propose skilled and experienced INED candidates through a rigorous and transparent nomination process. • We believe that the Nomination Committee should be chaired by an INED. • On top of that, it would be helpful if the HKEX articulates its expectations about listedcos' diversity initiatives, along with corresponding reporting activities.
Director training • A new listing rule to mandate director training without specifying the minimum number of training hours required for existing directors; • New directors appointed after 1 January 2025 would have to undergo 24 training hours within one and a half years of their appointment, which is	• We support mandatory training for directors. As for the number of hours, we can take reference from the CPD hours required for HK licensed corporations. • HKEX also proposes five topics to support continuous professional development, ranging from directors' duties under Hong Kong law, corporate governance, and ESG matters, to updates on industry developments and business trends. To take into account market development, the list of topics should be dynamic and refreshed regularly. For instance, topics such as cyber security, the implications of AI are topics that the Board should have a basic understanding. • We believe structured and formal training would be more meaningful, with topics evolving around the five areas and other emerging topics.

separate from the induction programme. • A revised mandatory reporting rule to require enhanced disclosure of director training in the CG Report.	• As to what would be the appropriate number of hours and topics, we believe that the board should be given certain flexibility to design and implement a training plan that is best suited for its own circumstances. • There should be adequate training resources from the HKEX. This should include pre-selected training resources to equip directors with necessary skills and knowledge to discharge their duties and represent the interests of shareholders. In view of the increasing complexity of their roles, tailored training for external directors should be developed to enable them to effectively discharge their responsibilities, ensure appropriate checks and balance through constructive management challenge, enable constructive participation in board meetings, and understand the risks of the business.
Board evaluations • A requirement for a board evaluation to be conducted at least every two years would be upgraded from the current recommended best practice to a CG Code provision under the HKEX proposals. • Disclosure of the board performance review should be disclosed in the CG Report.	• We support this move but apart from evaluating the board as a whole, it is important to evaluate individual directors. • In addition, it would be helpful if independent shareholders can understand who performs the evaluation, how is it being done, the criteria being used, the process, the results, and recommendations; as well as how they are actioned on. • Very often, listedcos just disclose the fact that there has been a board evaluation, and there are self-congratulatory remarks. We hope to see a meaningful assessment, so as to understand what are the gaps being identified and what value added the Board hopes to provide going forward. • The provision of a summary of recommendations – based on both internal and external board reviews in the annual report or the website would be very helpful.
Board skills matrix A new CG Code provision would require companies to have and disclose a board skills matrix in the CG Report, with enhanced disclosure on the current mix of skills and additional ones the board is looking to acquire.	• We welcome enhanced disclosures but hope to see more details on the directors' relevant skills, its relevance and potential contributions to the listedcos in developing their strategy. • What is also important is to show what are the skill sets that are missing and how the Board plans to address this and bolster its competence. • In addition, based on observations of market practices, some members recommended HKEX to require listedcos to provide explanatory notes to substantiate the skill mapping process, such as indicating which experiences or qualifications have equipped the directors with the relevant expertise (or else the requirement would only result in superficial or mechanical exercise whose outputs do not provide any meaningful insights to investors). This would

	enhance the credibility and usefulness of the skill matrix disclosure and enable shareholders to make more informed voting decisions.
Risk Management and Internal Controls Upgrade the current CG Code provision on an annual board review of risk management and internal control systems to mandatory disclosure.	• We support the proposal but will encourage greater clarity regarding the expectations of the respective roles of management and internal audit in implementing and reviewing risk management and internal control systems. • We believe it is important to give greater clarity regarding the expected role of internal audit within the organisation structure as well as the division of labour. • The new disclosure requirements would see listedcos provide information supporting the board's conclusions on the effectiveness of RMIC systems, including "any confirmations received (as applicable)" from internal and external parties. We believe HKEX could go further and require external confirmation in key areas of risk management and internal controls.
Dividends A new mandatory disclosure rule requiring listed companies to disclose more details on dividend policies. There are a few upgrades proposed: • Companies should state in a policy the aim and key factors the board will take into account when deciding on a dividend payment. • Material variations in dividend rates compared to previous payouts should be explained. • Issuers should explain why they declined to pay a dividend and how they intend to enhance investor returns. • Companies should state whether dividend decisions align, or not, with their dividend policy.	• We support the proposal but believe it is important to have the force of a listing rule. • Furthermore, the dividend policy is only one piece of capital management, We believe that it is imperative to broaden the disclosure requirement to include share buyback and other capital management policies more generally. This will enable investors to have a holistic view of the capital management approach and policy of a listedco.

• Companies without a dividend policy should state this fact and explain why they do not have one.	
<u>Requirement for issuers to set a record date</u> Codify guidance that issuers should set a record date for annual meetings and for receiving entitlements.	We support this proposal.
<u>Disclosure on modified auditors' opinion</u> A new listing rule that issuers disclose modified auditor's opinions.	We support this proposal, which would codify the practice of disclosing detailed information when there is a modified auditor opinion.
<u>Monthly updates to the board</u> Clarification of the information which should be provided to the board in monthly updates.	We support this proposal.

(END)