

**HKEX Consultation Paper**  
**Review of Corporate Governance Code and Related Listing Rules**  
**(June 2024)**

**Response by CK Asset Holdings Limited**

**General**

*Please state whether your response represents the view of your company/organisation or your personal view:*

**Company / Organisation view**

*Company/Organisation Name:*

**CK Asset Holdings Limited**

*Company/Organisation Type:*

**Listed company**

*Contact Person:*

*Name:*

*Job Title:*

*Phone Number:*

*Email Address:*



**Disclosure of identity**

*HKEX may publish your identity together with your response. Respondents who do NOT wish their identities to be published should check the box below; otherwise, please click "Next":*

I/We do NOT wish to disclose my/our identity to the members of the public.

**Answers to Consultation Questions**

**Preamble**

First and foremost, we would like to express our view that 2025 is not the opportune time to tighten the corporate governance regime that requires further investment of costs and resources. Amid a challenging macroeconomic environment, the businesses of many issuers in Hong Kong are still recovering from a series of stress tests that took place in the past years. The Hang Seng Index has dropped more than 30% compared with five years ago. The revenue and share price of many issuers have decreased significantly due to geopolitical tensions, high interest rates and a challenging property market. Hong Kong issuers are now striving to improve their business performance and

profitability. We respectfully submit that should HKEX deem it appropriate to enhance the corporate governance regime, it should consider deferring the introduction of the new requirements by at least two to three years' time, subject to the prevailing economic climate and conditions in Hong Kong further improving, thereby allowing issuers to focus on their business viability first, before allocating more of their resources and efforts to compliance matters. Introducing more stringent requirements against the current economic backdrop may lead to issuers adopting a check-the-box compliance mentality instead of driving a cultural change.

**(A) Board Effectiveness**

***Question 1***

*Do you agree with our proposal to introduce a new CP requiring issuers without an independent board chair to designate one INED as a Lead INED to enhance engagement with investors and shareholders?*

- (a) There is insufficient evidence to suggest that shareholders are better served when the board is led by an independent chair. The value of having a non-executive chair is largely dependent on the unique circumstances of a company. Issuers should have the discretion to tailor their leadership structure in a manner that best suits them.
- (b) The board of directors shares a collective responsibility for managing the company and all directors owe fiduciary duties to shareholders and are expected to discharge their responsibilities in a diligent manner. The Lead INED designation conflicts with the principle of equal roles among directors, and will inevitably create a hierarchy among INEDs. Singling out one INED for certain responsibilities may potentially cause discord among INEDs and create unnecessary tensions in the boardroom without providing any real benefits. The INEDs should collectively act as a sounding board for the chair of the board and facilitate communication with shareholders. There is also a risk that the Lead INED will be targeted in legal actions against the issuer, and this will be a deterrent for potential Lead INEDs.
- (c) The role and responsibilities of a Lead INED are not clear and may overlap with those of an investor relations manager. Stakeholders who wish to get in touch with issuers can so do efficiently through the issuers' corporate affairs, investors relation, and company secretary offices. In particular, investor relations department can arrange meetings for investors/shareholders to meet with INEDs (such as Audit Committee chairperson) to answer any questions they may have. The assumption that a Lead INED can facilitate and strengthen communication between investors and the board, among INEDs, and between INEDs and other directors needs to be further substantiated by empirical evidence.
- (d) Investors and shareholders engagement for global conglomerates can be a full-time job. A Lead INED may feel overwhelmed by the task as it is difficult and time-consuming to bear such responsibilities alone.
- (e) There is limited evidence to demonstrate that appointing a Lead INED to the board can balance the power of a non-independent chair. The proposal is premised on

the basis that the non-independent chair and the management are not communicating with the INEDs, which is not the case for most issuers. Institutional investors who are advocating for the change are not necessarily fully engaged in the Hong Kong market through their investments. There is no guarantee that they will re-direct more funds to Hong Kong after implementation of the proposal. It appears that the rationale of the proposal is more psychological than truly corporate governance driven.

## **Question 2**

*Regarding continuous professional development for directors, do you agree with our proposals to:*

- (a) *Make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours?*

Yes, we agree. Directors need continuous training to keep up with the change of laws and regulations, and to refresh their knowledge from time to time. Directors should be reminded that if they fail to discharge their duties and responsibilities, they may face discipline action by the relevant regulator and may attract civil and/or criminal liabilities under the applicable laws and regulations in the jurisdictions where the company operates.

- (b) *Require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment?*

Yes, we agree. However, it is hard to quantify the number of training hours required. The duration, frequency, and extent of training should be determined on a case-to-case basis, taking into consideration the qualification, experience, background and needs of individual directors, as well as the complexity of businesses and operations of issuers. The quality of training is more important than the duration of training. A minimum of 24 hours of training for onboarding a director is too rigid. In addition, a director's experience gained from acting as a director of companies listed in other reputable exchanges should be recognised, and the required training hours should be reduced accordingly.

- (c) *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, we agree, but the definition of "First-time Directors" should mean directors who has not been a director of listed company. Directors who have not served as a director of an issuer for three years or more prior to their appointment should not be defined as "First-time Directors" if they can demonstrate through their professional qualification, experience and continuing learning that they already possess the requisite knowledge.

- (d) *Specify the specific topics that must be covered under the continuous professional development requirement?*

The proposal may encourage a checkbox mentality towards compliance, rather than an engaged and proactive approach. Issuers should be free to select topics based on the issues that are material to the issuers and the needs of directors, and to appreciate the fiduciary duty owed to shareholders as a whole.

**Question 3**

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

Yes, we agree.

**Question 4**

*Do you agree with our proposal to upgrade the current RBP to a CP requiring issuers to conduct regular board performance reviews at least every two years and make disclosure as set out in CP B.1.4?*

Yes, we agree, however, issuers should not be required to disclose details on the scope of the performance review, process and findings, areas of improvement identified, and/or measures taken or to be taken. Details of board performance review are potentially commercially sensitive. Disclosing such details is not in the best interest of the issuer and can be disadvantageous to its competitiveness.

**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?*

Issuers should have the discretion to decide whether to disclose the board skills matrix. A skills matrix may oversimplify the unique set of skills that directors bring to the board. It may be misinterpreted by shareholders leading to incorrect assumptions.

**Question 6**

*In relation to our proposal to introduce a “hard cap” of six listed issuer directorships that INEDs may hold, do you agree:*

- (a) With the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers?*
- (b) With the proposed three-year transition period to implement the hard cap?*

We agree that INEDs should devote sufficient time to carry out the work of listed issuers. However, whether an INED can devote sufficient time depends on a range of factors and should be assessed by the Nomination Committee on a case by case basis. The time required to adequately perform the role of an INED varies with the size and complexity of the issuer's business. A bright-line test of six directorships is arbitrary and unscientific. It is more important to consider whether an INED can make a meaningful contribution relevant to the businesses of the issuer.

### ***Question 7***

*Do you agree with the proposal to introduce a new MDR to require the nomination committee to annually assess and disclose its assessment of each director's time commitment and contribution to the board?*

Yes, we agree that the nomination committee should assess directors' commitment and contribution to the board on a regular basis. However, we do not think it is appropriate to disclose its assessment to the public. For example, if the nomination committee is of the view that the time commitment or contribution of a particular director could have been better, it is more helpful for the nomination committee to engage with that director in a discreet manner and discuss how improvement can be made going forward, as we believe HKEX's objective is to improve directors' engagement instead of to shame and penalise.

### **(B) Independence of INEDs**

### ***Question 8***

*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:*

- (a) With the proposed hard cap to strengthen board independence?*
  - (b) That a person can be re-considered as an INED of the same issuer after a two-year cooling-off period?*
  - (c) With the proposed three-year transition period in respect of the implementation of the hard cap?*
- (i) "Independence" should not be determined by the number of years of service alone. Whether a director is independent should be assessed on a case-by-case basis with reference to his/her business acumen, experience in related industries, professional qualification, international business exposure and the nature of the businesses of the issuer. The assumption that Long Serving INEDs can no longer maintain an independent view is unfounded. It is our experience that longer serving INEDs are in general frank and candid in terms of providing feedback to the board.
  - (ii) Similarly, the assumption that an INED who has served less than nine years would be independent is unproven. An INED may appear independent on paper due to the lack of available track record or publicised past relationship, but being prima facie independent does not mean he/she has the necessary credentials and professional competence to act as an INED.
  - (iii) We note that the current requirements as they stand are broadly in line with the requirements in the UK and Australia. The proposal is more stringent than the guidelines of Glass Lewis and BlackRock which set a cap of 12 years instead of nine years. Instead of setting a hard cap of nine years on INEDs, HKEX could consider to adopt a progressive approach to allow more time for issuers in Hong

Kong to find suitable INEDs and refresh their boards. Please also refer to the overall remark regarding the macroeconomic environment in Hong Kong.

**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?*

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

**(C) Board and Workforce Diversity**

**Question 10**

*Do you agree with our proposal to introduce a CP requiring issuers to have at least one director of a different gender on the nomination committee?*

Yes, we agree.

**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, we agree.

**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, we agree.

**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, we agree.

**Question 14**

*Do you agree with our proposal to codify the arrangements during temporary deviations from the requirement for issuers to have directors of different genders on the board as set out in draft MB Rule 13.92(2) in Appendix I?*

It is worth considering whether the proposal may suggest gender is more highly valued than merits, competence and capability of directors. It may result in non-compliant

issuers rushing the nomination and selection process and settling for less qualified candidates.

**(D) Risk management and internal controls**

***Question 15***

*Do you agree with our proposal to:*

- (a) *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; and*

Yes, we agree.

- (b) *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, we agree.

***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, we agree.

**(E) Dividends**

***Question 17***

*Do you agree with our proposal to introduce a new MDR requiring specific disclosure of the issuer's policy on payment of dividends and the board's dividend decisions during the reporting period?*

Yes, we agree with the proposal requiring disclosure of the issuer's policy on payment of dividends. However, an issuer should have a discretion as to whether to provide an explanation and disclose the reasons for not declaring any dividend or for material variation in the dividend rate during the reporting period compared to the previous period, unless the issuer deviates from its dividend policy.

**(F) Other minor Rule amendments**

***Question 18***

*Do you agree with our proposal to introduce a Listing Rule requirement for issuers to set a record date to determine the identity of security holders eligible to attend and vote at a general meeting or to receive entitlements?*

Yes, we agree.

**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, we agree.

**Question 20**

*Do you agree with our proposal to clarify our expectation of the provision of monthly updates in CP D.1.2 and the note thereto?*

Yes, we agree.

**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, we agree.

**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 refer to the preamble and our answers to Questions 1, 6 and 8.