



HKEx Consults on Corporate Governance Changes for January 2025

The Hong Kong Exchanges and Clearing Limited (**HKEX**) is consulting on changes to its Corporate Governance Code and related Listing Rules to limit the number of INEDs' concurrent directorships and tenure and increase disclosure of board dividend decisions. The changes are planned for implementation from 1st January, 2025 with a proposed three-year transition period for the changes relating to INEDs. The cut-off date for responding to the [Consultation Paper](#) is 16th August, 2024.

Improving Board Effectiveness

Designation of Lead Independent Non-Executive Director (INED)

There is currently no concept of a Lead INED in the HKEX Listing Rules as there is, in some form, in Australia, Singapore and the UK. The HKEX is proposing to add a new Code Provision which would require listed companies without an independent board chair to designate one INED as a Lead INED. The role of a Lead INED would be to facilitate and improve communication among INEDs, and between INEDs and the rest of the board and investors. A board chair will not be considered independent if they are not an independent director. As a Code Provision, the obligation would apply on a "comply or explain" basis and companies not designating a Lead INED would need to provide reasons for their non-compliance, for example by specifying the shareholder communication channels they have to enable investors to communicate with the board.

Mandatory Director Training

Under the existing framework, director training is encouraged but is not compulsory: it is a Code Provision under the Corporate Governance Code that directors should participate in continuous professional development to develop and update their knowledge and skills.¹

The HKEX is proposing to introduce a new Listing Rule requirement for:

- all directors to receive mandatory continuous professional training on specific topics but without setting a minimum number of training hours; and
- directors appointed as a listed company director for the first time and directors who have not served as

¹ Code Provision C.1.4

a listed company director for three years or more (**First-time Directors**) to complete a minimum of 24 training hours within 18 months of their appointment.

The requirements would apply to directors appointed after January 1st, 2025 including the directors of companies listed on other exchanges. The requirements would apply to directors appointed to fill a casual vacancy from the start of the listed company's full financial year following the date of appointment. The format of the training (e.g. in person or online, or internal or external provision) is not mandated.

The areas to be covered by mandatory training are:

- the roles, functions and responsibilities of the board, its committees and directors, and board effectiveness;
- listed companies' obligations and directors' duties under Hong Kong law and the Listing Rules, including important legal and regulatory updates affecting the discharge of those obligations and duties;
- corporate governance and Environmental, Social and Governance matters, including developments related to sustainability and climate-related risks and opportunities relevant to the listed company and its business;
- risk management and internal controls; and
- updates on industry-specific developments, business trends and strategies relevant to the listed company.

Mandatory Disclosure of Director Training in Corporate Governance Report

It is proposed that a new Mandatory Disclosure Requirement should be added requiring listed companies to confirm in their Corporate Governance Reports that their directors have participated in training as required by the amended Listing Rules. That would include disclosure that First-time Directors have completed the required minimum 24 hours training during the 18 months after being appointed.

Disclosure would also be required of the details of each director's training including the number of hours; the topics covered; the format (e.g. physical attendance or remote); and the name of any external training provider.

Board Performance Review

The conduct of a board performance evaluation is currently a Recommended Best Practice only under the Corporate Governance Code. In contrast, listed companies in Australia, Singapore and the UK are required to conduct and disclose board performance reviews on a "comply or explain" basis.

The HKEX is proposing to upgrade the existing Recommended Best Practice to a Code Provision and to require listed companies to conduct a board performance review at least every two years. They would then have to disclose in the Corporate Governance Report details of the scope of the performance review carried out, the process and its finding, any areas identified for improvement and measures taken or proposed to address the findings. Listed companies will be free to determine the format of board performance reviews and to conduct the review internally or appoint external providers.

Disclosure of Board Skills Matrix

The HKEX Listing Rules do not currently require listed companies to disclose a board skills matrix. By way of comparison, Australia apparently requires listed companies to maintain and disclose a board skills matrix on a comply or explain basis, while Singapore requires companies to set out how the directors' skills, talents, experience and diversity serve the company's purpose, value, strategy and desired culture. The HKEX is proposing to implement a new Code Provision requiring listed companies to maintain a board skills matrix and to disclose information on: their boards' existing skills mix; how the combination of their directors' skills, experience and diversity serve the company's purpose, values, strategy and desired culture; and their plans to acquire further skills. The HKEX is encouraging companies to use the board skills matrix as a tool for identifying missing skills and increasing the board's skills and diversity.

New 6 Directorship Cap for INEDs

The Corporate Governance Code currently requires that if a proposed INED will be holding their seventh (or more) listed company directorship, the board should explain to shareholders voting on the appointment why it believes the individual would be able to devote sufficient time to the board. Code Provision B.2.1 of the Corporate Governance Code also requires directors to ensure they can devote enough time and attention to the listed company's affairs and to not accept a directorship if that is not the case. In vetting listing applications, the HKEX says it discourages applicants from appointing INEDs holding seven or more listed company directorships (**Overboarding INEDs**).² At the end of 2023, 23 Overboarding INEDs served on the boards of 181 companies listed on the HKEX (approximately 7% of all HKEX-listed companies), and five Overboarding INEDs held 10 or more listed company directorships.

The Consultation Paper notes that Mainland China caps the number of concurrent INED directorships that can be held at three, while the UK Corporate Governance Code states that full-time executive directors should not have more than one non-executive director role in a FTSE 100 company or other significant commitments.³

The HKEX is proposing a new Listing Rule imposing a six-directorship cap on the number of Hong Kong listed company directorships an INED can hold. That cap will cover directorships as executive director, non-executive director and INED and will prevent an individual being appointed as an INED if they already hold six directorships of other Hong Kong-listed companies. The rule will take effect on January 1st, 2025, and the HKEX will no longer accept listing applications from companies with INEDs exceeding the maximum of six listed company directorships.

For listed company directors appointed before 1st January, 2025, a three-year transition period will be implemented to facilitate the phasing out of INEDs with more than six directorships. INEDs holding more than six Hong Kong-listed company directorships will have to comply with the six directorship limit by the conclusion of the first AGM occurring after December 31st, 2027 held by any issuer of which they are a director (that is the first AGM held by the companies of which the person is a director).

New Mandatory Disclosure Requirement

A new mandatory disclosure requirement will require the nomination committee of listed companies to annually assess and disclose its assessment of each director's time commitment and contribution to the board, taking into account their professional qualifications, work experience, listed company directorships and other significant time commitments, and other factors or circumstances relevant to their character, integrity, independence and experience. The nomination committee will be expected to consider the varying levels of time commitment for different board and board committee positions and to evaluate each director's significant external time commitments according to their nature and complexity. The HKEX refers to the European Central Bank's [Guide to Fit and Proper Assessments](#) as a useful reference for assessing time commitments.

INEDs' Independence

There is currently no limit on INEDs' tenure under the Listing Rules, although the Corporate Governance Code requires that the further appointment of an INED who has served nine years must be approved by shareholders and that the resolution must give reasons for the board's belief that the director remains independent and should be re-elected.⁴ At the end of 2023, around 31% of Hong Kong-listed companies had INEDs who had served for over nine years and around 1.3% of Hong Kong-listed companies only had INEDs with more than nine years' service. The HKEX notes that many listed companies continue to cite meeting the independence criteria of Listing Rule 3.13 as a reason for supporting an INED's independence, when those criteria do not address whether the individual thinks independently and can contribute independently and objectively to the board. The Hong Kong Monetary Authority's guidance for the INEDs of Hong Kong authorised institutions calls into question the independence of an INED who has served on the same board for more than nine years. The corporate governance codes of the UK and Australia recognise that long directorship tenures can impair, or appear to impair, directors' independence while the Singapore and Malaysian Stock Exchanges cap independent directors' tenure at nine years⁵ and 12 years,⁶ respectively.

9-year cap on INEDs' Tenure

The HKEX is proposing a new HKEX Listing Rule setting a hard cap of nine years on the tenure of INEDs. A person

2 Chapter 3.10 (Directors, Supervisors and Senior Management) of HKEx's Guide for New Listing Applicants.

3 Provision 15 of the UK Corporate Governance Code

4 Code Provision B.2.3

5 [SGX Group Announcement](#) of January 11th, 2023

6 [Bursa Malaysia Amendments](#) of January 19th, 2022

will not be considered independent if they have been an INED of an issuer for nine years or more, but they may continue to contribute to the board in a re-designated capacity as non-executive directors (**NEDs**).

The nine-year tenure will be counted from the date of the company's listing if the INED was appointed before then, or from the date of their appointment after the company was listed. If a listed company is restructured after listing, INEDs' tenure will continue to accrue notwithstanding any transfer from another company in the same listed group.

If an INED ceases to be an INED for less than two years and is then reappointed as an INED, the period of non-appointment as an INED will still be counted in their period of tenure.

An INED who reaches the nine-year limit can serve as an INED of the same issuer after a cooling-off period of two years. During the cooling-off period, the individual must not serve as a director of the relevant issuer, its holding company or any of their respective subsidiaries or any core connected persons of the issuer.

The HKEX is proposing a three-year transition period for implementing the new Listing Rule which will take effect on January 1st, 2028. An INED who has served continuously for more than nine years will no longer be considered independent after the first AGM of the listed company held after December 31st 2027. During the transition period, the current requirements will continue to apply in relation to: re-electing INEDs that have served more than nine years, the disclosure of new INEDs' appointment and INEDs' tenure where all the company's INEDs have served on the board for more than nine years.

The requirement to disclose length of tenure currently applies only to INEDs of companies that only have INEDs who have served as INEDs of the company for more than nine years.

The HKEX is proposing to change the relevant mandatory disclosure requirement⁷ so that listed companies will have to disclose the length of tenure and current period of appointment for all their directors.

Board Diversity Proposals

Currently, the nomination committee (or the board) must have a board diversity policy and disclose that policy, or a summary of it, in the Corporate Governance Report. A single gender board will not be considered diverse⁸ and listed companies with single gender boards are required to appoint at least one different gender director by December 31st, 2024. Mandatory disclosures are required to be included in listed companies' Corporate Governance Reports on board and workforce diversity and Code Provision B.1.3 requires an annual board review of the implementation and effectiveness of a listed company's diversity policy.

At the end of 2023, around 19% of Hong Kong-listed companies still had single gender boards while women made up around 17% of listed company directors. The HKEX notes in the Consultation Paper that more disclosure of numerical targets and timelines for the achievement of board diversity is warranted.

As to the situation in other major listing jurisdictions, the HKEX notes that Australia requires listed companies to set measurable objectives for achieving gender diversity on the board, among senior executives and across the workforce on a "comply or explain" basis. It also insists on disclosure of the proportions of men and women on the board, in senior executive positions and across the workforce. The UK requires disclosure of the gender identity of the board and executive management, and the gender balance of senior management and their direct reports.

One different gender director on Nomination Committees

The proposals would introduce a new Code Provision requiring listed companies to have at least one director of a different gender on their nomination committee.

Annual review of board diversity policy

The HKEX proposes to upgrade the current Code Provision requiring an annual review of listed companies' board diversity policy to a mandatory disclosure requirement. Proposed new mandatory disclosure requirement J would require:

"(a) The issuer's policy on board diversity or a summary of the policy, which should include information on

⁷ Revised Mandatory Disclosure Requirement paragraph B(a)

⁸ Note to Main Board Listing Rule 13.92 and GEM Listing Rule 17.104

measurable objectives (e.g. numerical targets and timelines) that it has set for the promotion of gender diversity on its board and the measures the issuer has adopted to develop a pipeline of potential successors to the board to achieve gender diversity; and (ii) the results of issuer's review of the implementation of its board diversity policy conducted during the year (including progress towards the issuer's objectives and how the issuer has arrived at its conclusion);

- (b) *the issuer's policy on diversity in the workforce (including senior management) or a summary of the policy, including any plans or measurable objectives (e.g. numerical targets and timelines) the issuer has set for achieving gender diversity, and progress on achieving those objectives. Where applicable, issuers may disclose any mitigating factors or circumstances which make achieving gender diversity across the workforce (including senior management) more challenging or less relevant; and*
- (c) *the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management)."*

Workforce diversity policy

Main Board Listing Rule 13.92 and GEM Listing Rule 17.104(1) would be amended to require listed companies to have a diversity policy for their workforce and related disclosures would be required under the amendments to mandatory disclosure requirement J. The HKEX notes in the Consultation Paper that different diversity considerations may apply at the board and workforce levels and that the demographics of particular industries or geographic locations may make the setting of diversity targets at the workforce level more challenging. Accordingly, listed companies will only have to disclose "*any plans or measurable objectives*" for achieving gender diversity at the workforce level.

Gender ratio disclosure

Revised mandatory disclosure requirement J(c) would require the gender ratio of senior management and the workforce (excluding senior management) to be separately disclosed.

Arrangements during temporary deviations

New Listing Rules would codify the HKEX's existing guidance on the arrangements during temporary deviations from the requirement for listed companies to have directors of different genders on the board. From January 1st, 2025, a listed company will have to publish an announcement if it has a single gender board giving the reasons why it does not have directors of a different gender and appoint director(s) to ensure its compliance with the board gender diversity requirement within three months of failing to meet that requirement.

Risk Management and Internal Control (RMIC)

Although the current Corporate Governance Code mandates that boards oversee the company's RMIC system and requires an annual review and a report to shareholders in the Corporate Governance Report, the HKEX has observed failures in establishing effective RMIC systems. It also notes the developments in the UK and Singapore suggesting a trend in tightening requirements on the RMIC review process and confirmation of its effectiveness.

Proposed emphasis on the board's responsibility for RMIC

The HKEX is proposing to emphasise in Principle D.2 the board's responsibility for a listed company's RMIC system and the annual review of its effectiveness.

Mandatory annual review of RMIC Systems

The HKEX also proposes upgrading to a mandatory requirement the requirement to conduct (at least) annual reviews of RMIC systems' effectiveness under revised mandatory disclosure requirement paragraph H. It will also require detailed disclosures on: (i) the RMIC systems in place (including any significant changes made); (ii) the process through which the review of the RMIC systems was conducted; (iii) a board confirmation on the appropriateness and effectiveness of the RMIC systems, and information supporting the board's conclusion (including confirmations from management, the relevant board committee(s) with responsibility for the RMIC systems, other internal departments, the company's independent auditors and other external providers (as applicable)); and (iv) details of any significant control failings or weaknesses identified during the review and/or previously reported but unresolved, and any remedial steps taken or proposed.

It will also revise the Code Provision on the required scope of a listed company's review of the effectiveness of its RMIC systems and set out the areas expected to be included in that review. HKICPA's "AATB 1 Assistance Options to New Applicants and Sponsors in connection with Internal Controls over Financial Reporting" provides guidance on the scope and depth of matters which a comprehensive internal controls assessment should consider. Appendix 3 of AATB 1 also contains illustrative areas of focus for a review of internal controls.

The HKEX proposes to provide guidance on its website for listed companies to refer to when determining the scope of the review of their RMIC systems.

Dividend Proposals

The Corporate Governance Code currently requires listed companies to have a dividend policy and to disclose it in their annual reports. Issuers must also report dividend rates paid on each share class and any dividend waivers in their financial statements and reports. While compliance with the current disclosure requirements is high (99.5%), the HKEX notes that other jurisdictions have implemented broader measures aimed at improving listed companies' capital management. It notes that Japan and South Korea have introduced initiatives to improve listed companies' capital efficiency and encourage disclosure of their efforts to enhance value. Other jurisdictions, such as Singapore and Mainland China have required listed companies to disclose their reasons for not declaring dividends, and Mainland China additionally requires companies that do not declare dividends to disclose the measures they are taking to enhance investor returns.⁹

Upgrade dividend policy disclosure requirement to mandatory and require enhanced disclosure

The HKEX is proposing to upgrade the current dividend policy disclosure requirement from a Code Provision to a mandatory disclosure requirement. Listed companies with a dividend policy will be required to: (i) disclose the aim or objective of the policy and the key factors that the board takes into account when deciding whether to declare, recommend or pay a dividend; and (ii) confirm that all dividend decisions made by the board during the reporting period were made in accordance with the company's dividend policy or, if not, explain any deviations from the dividend policy.

Listed companies not having a dividend policy will have to state this and disclose the reasons for not having one.

All listed companies, irrespective of whether they have a dividend policy or not, will have to make the following disclosures with respect to the board's decisions on dividends: (i) an explanation of the reason(s) for any material variation in the dividend rate between a dividend declared during the reporting period compared to that for the previous corresponding period; and (ii) where the board decided not to declare a dividend, the reasons for its decision and the measures the company proposes to enhance investors' return (if any).

If earnings are retained, listed companies are expected to explain how they will be used and link that to the company's business model, strategy and objectives. Reasons should be based on companies' particular circumstances and boilerplate language should be avoided.

Other Listing Rule Changes

New requirement to set a record date

The Listing Rules set a deadline for listed companies' announcement of a book closure. If a company sets a record date without book closure, the book closure requirements apply to the record date. However, the Listing Rules do not require listed companies to set a record date: the HKEX's expectation for companies to set a record date for general meetings and entitlements is contained only in its guidance materials which are not binding on listed companies.

The HKEX is therefore proposing to amend Main Board Listing Rule 13.66(1) and GEM Listing Rule 17.78(1) to require listed companies to set a record date for general meetings and receiving entitlements. The current announcement and minimum trading period requirements for book closures will be revised accordingly.

Disclosure of modified auditors' opinions

The Listing Rules require listed companies to give more detailed and/or further information if their financial statements do not give a true and fair view of their affairs, results of operations and cashflows. However, the

⁹ For example, Article 8 of the CSRC Cash Dividend Guidelines

Listing Rules do not set out any specific requirements as to the information to be disclosed.

In its “Review of Issuers’ Annual Reports”, the HKEX recommends that companies receiving a modified auditors’ opinion should disclose in their annual reports: (i) details of the modifications and their impact on the company’s financial position; (ii) the management’s position and basis on major judgmental areas (e.g. the basis for impairment or valuation of assets) and how it differs from that of the auditors; (iii) the audit committee’s view of the modifications and whether it has reviewed and agrees with management’s position on the major judgmental area(s); and (iv) the listed company’s proposals to address the modifications.

The HKEX is proposing to codify these recommended disclosures in the Listing Rules.

Provision of monthly financial information to the board

Code Provision D.1.2 requires listed companies’ management to provide the board with monthly updates giving a balanced and understandable assessment of the company’s performance, position and prospects and explains the information expected to be included in those updates. The HKEX is now proposing to revise that Code Provision to clarify that management should provide these monthly updates to the board of a listed company and that directors should request monthly updates if they are not provided with them.

Alignment of nomination committee requirements with audit and remuneration committee requirements

Listed companies are required to establish a nomination committee chaired by the chairman of the board or an INED and made up of a majority of INEDs (Main Board Listing Rule 3.27A and GEM Listing Rule 5.36A). Listed companies with weighted voting rights structures must establish a nomination committee that complies with the Principle and Code Provisions that apply to the nomination committee in the Corporate Governance Code (section B.3 in Part 2 of Appendix C1 of the Main Board Rules) and is chaired by an INED and made up of a majority of INEDs (Main Board Rules 8A.27 and 8A.28).

The HKEX is proposing to revise the Listing Rules to align the requirements on establishing written terms of reference for the committee and the arrangements during temporary deviations from requirements so that these are the same for the nomination committee, the audit committee and the remuneration committee. This will involve revising Main Board Listing Rules 3.23 and 3.27 and GEM Listing Rules 5.33 and 5.36 and adding new Main Board Listing Rules 3.27B and 3.27C and GEM Listing Rules 5.36B and 5.36C (for all companies except those with a weighted voting rights structure), and new Main Board Rule 8A.28A (for companies with weighted voting rights structures).

Implementation and Transitional Arrangements

Implementation of the proposed Corporate Governance Code and related Listing Rule amendments is intended to come into effect on January 1st, 2025 and will apply to Corporate Governance Reports and annual reports for financial years commencing on or after that date. As detailed above, a three-year transition period is proposed for the proposed six directorship cap and the proposed cap on INEDs’ tenure. These proposed Listing Rules will take effect on January 1st, 2028 with compliance required by the conclusion of the first AGM occurring after that date.

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