

June 2024

Strengthening board independence, diversity and transparency: key proposals from HKEX



Introduction

On 14 June 2024, The Stock Exchange of Hong Kong Limited (the "**Exchange**") published a consultation paper outlining proposed enhancements to the Corporate Governance Code (the "**CG Code**") set out in Appendix C1 to the Rules Governing the Listing of Securities on the Exchange (the "**Listing Rules**") and related Listing Rules (the "**Consultation Paper**"). The proposed amendments will apply to corporate governance reports for financial years commencing on or after 1 January 2025, with a three-year transition period for the proposals to phase out independent non-executive directors ("**INEDs**") (i) holding seven or more listed issuer directorships ("**Overboarding INEDs**") or (ii) having served for more than nine years on the board of a listed issuer ("**Long Serving INEDs**").

Key proposed amendments include:

- the designation of a **lead INED** for issuers without an independent board chair;
- phasing out **Long Serving INEDs** to strengthen board independence; and
- enhancing disclosures regarding issuers' **dividend** policy and the board's dividend decisions.

Background

The Consultation Paper seeks views and comments on proposed changes to the CG Code and related amendments to the Listing Rules. Interested parties can respond to the Consultation Paper by 16 August 2024. The Exchange has reviewed its CG framework from time to time to ensure that it remains fit for purpose, continues to promote high quality corporate governance standards, and is adequate for maintaining investors’ confidence in the market. The last round of amendments to the CG Code were introduced on 1 January 2022.

In formulating the current proposals, the Exchange has considered regulatory developments in key jurisdictions including the UK, Australia, Singapore, Malaysia, and Chinese mainland, as well as findings from its own Analysis of 2022 Corporate Governance Practice Disclosure.

Key amendments

The key proposed amendments to the Rules are summarised below:

Aspects	Key changes
Board effectiveness improvements	- requiring issuers without an independent board chair to designate one INED as a lead INED; - annual director training on specific topics, with a minimum of 24 hours of training for first-time directors within the first 18 months of appointment; - requiring a board performance review to be conducted at least every two years, with specific disclosure in the Corporate Governance Report under the CG Code (the "CG Report"); - requiring issuers to maintain and disclose a board skills matrix in the CG Report, with enhanced disclosures in the CG Report on the board’s skills; and - capping Overboarding INEDs so they do not hold more than six Hong Kong-listed issuer directorships simultaneously.
Strengthening board independence	- hard cap on the tenure of Long Serving INEDs, with a three-year transition period; and - allowing Long Serving INEDs to serve again as an INED on the board of the same issuer upon completion of a two-year cooling-off period. Appointed as INED Ceases to be INED after Year 3 Reappointed as INED after Year 4 Nine-year tenure cap reached, despite one year gap - INED must step down or be re-designated as NED Year 1Year 2Year 3Year 4Year 5Year 6Year 7Year 8Year 9 INED Tenure INED tenure continues to accrue if gap between INED appointments is less than two years

Aspects	Key changes
Promoting diversity	- requiring issuers to have at least one director of a different gender on the nomination committee; - requiring an annual review of the implementation of the board diversity policy; and - requiring issuers to have and disclose a diversity policy for their workforce (including senior management).
Enhancing risk management and internal controls	requiring enhanced disclosures in the CG Report on the review conducted (at least annually) by the board of the effectiveness of the issuer's and its subsidiaries' risk management and internal control systems (" RMIC Systems "), including supporting information for the board's conclusion that the RMIC Systems are effective and adequate and details of the review findings.
Better capital management	requiring enhanced disclosures of an issuer's dividend policy and its board's dividend decisions.
Other Listing Rules amendments	- codifying the Exchange's recommended disclosures in the annual report regarding issuers' modified auditors' opinions into the Listing Rules; and - aligning requirements applicable to the three mandatory board committees, namely the nomination committee, the audit committee and the remuneration committee, on establishing written terms of reference and arrangements during temporary deviations from requirements.

Next steps

Subject to the responses to the Consultation Paper, the revised CG Code and related Listing Rules will come into effect on 1 January 2025 and apply to CG Reports and annual reports in respect of financial years commencing on or after 1 January 2025.

In respect of the proposals to phase out Overboard INEDs and Long Serving INEDs, the Exchange acknowledges that more time may be needed to allow affected issuers to appoint suitable directors and adjust their board composition. Therefore, the Exchange proposes a three-year transition period, which is consistent with the approach adopted to phase-out single gender boards. This means, the relevant rules will apply from 1 January 2028 onwards, with compliance required by the conclusion of the annual general meeting following 31 December 2027 at the latest.

Given the complexity and broad implications of the proposed amended Listing Rules, we strongly advise issuers to consult legal advisors. Early preparation and expert guidance will be key to navigating this regulatory evolution successfully.

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