



Hong Kong Exchanges and Clearing Limited (HLEX)
17M Floor, Hopewell Center
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Wanchai, Hong Kong

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Review of HKEX Corporate Governance Code and Related Listing Rules

We refer to HLEX consultation paper on the review of the Corporate Governance Code and Related Listing Rules. We appreciate the opportunity to contribute our investor perspective to the reform of Hong Kong governance requirements.

Norges Bank Investment Management (NBIM) is the investment management division of the Norwegian Central Bank and is responsible for investing the Norwegian Government Pension Fund Global. NBIM is a globally diversified investment manager with HKD 13 trillion at end June 2024, 50 billion of which invested in the shares of 122 Hong Kong companies.

We welcome the proposals by HLEX to review the Corporate Governance Code and Listing Rules, aiming to raise governance standards in the Hong Kong market. We particularly welcome the suggested proposals on board independence and director tenure, director training, board evaluations, and overboarding. The proposals will improve governance practices in the market and enhance alignment with international best practice. Beyond the detailed suggestions in the consultation paper, on which we comment below, we suggest HKEX further considers the nomination process for independent directors, with a view to enhancing its legitimacy.

We welcome the proposal to require issuers to design a lead independent non-executive director (INED), should the company not have an independent board chair. We agree that the lead INED should have responsibility for enhancing engagement with investors and shareholders, and also believe that their mandate should be broader and deal with all situations where the board chair is conflicted. We also support the hard cap of director positions that an individual director can hold, but suggest lowering it to five and specifying the maximum number in cases where the director holds a CEO or chair position. Regarding the proposed "hard cap" of 9 years for INED tenure, we do not have a specific threshold in our own voting guideline, acknowledging that there is no uniform definition of independence across all markets, but we welcome requirements that help avoiding potential conflicts of interest.

We support the proposals on continuous professional development and agree that it should be mandatory for both existing directors and "first time directors"; we encourage HKEX to set a minimum amount of hours for the former as well. We support the suggested list of topics to be covered, underline the importance of boards identifying specific training topics based on the business strategy, and support a mix of internal and external providers for the training requirements. We similarly support

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the proposal to require regular board performance reviews and encourage HKEX to go further in expanding the remit to assessing individual directors' and specific committees' performance, as well as recommending external reviews. We also support the proposals on diversity, risk management and internal controls, and the board skills matrix. Our detailed response to the questionnaire can be found below.

We thank you for considering our perspective and remain at your disposal should you wish to discuss these matters further.

Yours sincerely

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Detailed consultation questions

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? Please provide reasons for your views.

We welcome the proposal to introduce a new CP requiring issuers to design a lead independent non-executive director, should the company not have an independent board chair. We agree that the lead INED should have responsibility for enhancing engagement with investors and shareholders, however we also believe that their mandate should be broader and deal with all situations where the board chair is conflicted. These situations could include succession planning and assessing the chair's performance. Furthermore, we encourage HKEX to turn the "comply or explain" requirement into a mandatory disclosure requirement or a listing rule over time.

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?*
 - (b) Require first-time directors to complete a minimum of 24 hours of training within 18 months following their appointment?*
 - (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 of more prior to their appointment?*
 - (d) Specify the specific topics that must be covered under the continuous professional development requirement.*
- Please provide reasons for your views.*

We welcome HKEX proposals on continuous professional development. We agree that continuous professional development should be mandatory for all existing directors, as this is important for investors to carry out their duties effectively (question 2a). Professional development is necessary to ensure that directors have the required knowledge to carry out their duties under the Hong Kong corporate governance framework, as well as to deal with emerging issues such as sustainability, geopolitical developments, and digitalization. We support the proposal to require first time directors to complete a minimum of 24 hours of training within 18 months following their appointment (question 2b) and agree with the definition of "first time directors" (question 2c). We believe a minimum number of hours could be specified for existing directors too. We also support the list of topics that should be covered under the training requirement, which include the role of the board, director duties, corporate governance and ESG matters, risk management and internal controls, and issuer-specific updates. We believe it is important that the board identifies the specific topics that are relevant to its directors, based both on the company's strategy and individual directors' upskilling needs. While there is no suggested requirement on the format of training and training providers, we would support a mix of formal training provided by external parties and company in-house briefings.

Question 3. Do you agree with the proposed consequential changes to Principle C.1 and CP C.1.1 of the CG Code?

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Yes.

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?

While we welcome the proposal to upgrade the recommended best practice to a “comply or explain” requirement for issuers to conduct regular board performance reviews, we encourage HKEX to go further on two dimensions. First, we encourage HKEX to consider recommending external reviews, which can provide a higher degree of objectivity to the process. Second, we suggest HKEX mandates an evaluation not only of the board in its entirety, but also of individual directors and board committees, following the example of other jurisdictions in the region such as India and Taiwan. Finally, we support the requirement to disclose details of the performance review, including the scope, process and findings, together with measures taken or planned to address them.

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?

Yes, we support the proposal to introduce a new “comply or explain” requirement for the board to disclose a skills matrix. We encourage disclosure on how the experience and diversity of directors can contribute to serving the strategy of the company, as well as on the plans to acquire further skills should a gap be identified based on the nature of the business.

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?

Yes, we agree on the importance of directors having adequate time and capacity to meet their responsibilities, including unforeseen events. We believe that serving on too many boards can interfere with director performance, and that board members of listed companies should not serve on more than five boards at one time. Given the significant time commitment required by a chair position, we also expect the chairperson of a company not to chair the board of any other company. We therefore encourage HKEX to lower the proposed limit of 6 positions, and to specify a significantly lower cap of positions where the director holds either the chair or CEO function.

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?

N/A

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?

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Yes, we support the proposed MDR to require the nomination committee to annually assess and disclose each director's time commitment and contribution to the board. Furthermore, we believe that disclosures should include all external board assignments, committee roles and employment, so that shareholders can assess the functioning of the board. We also take the opportunity to underline that many nomination committees are chaired by the board chairman, which might not be conducive to open and unbiased discussions on the time management of individual directors. We call on HKEX to require the chair of the nomination committee to be independent, following the example of other markets in the region such as Australia or Singapore.

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?

We support a flag at nine years on the tenure of INEDs, beyond which the INED would not necessarily remain classified as independent. We do not have a term threshold in our own voting guideline, acknowledging that there is no uniform definition of independence across all markets and circumstances differ across companies. However, as a shareholder, we consider the board's overall tenure profile and might determine that it is not sufficiently independent if there is no reasonable refreshment.

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?

We would support a longer time period after which a former director can recover their condition of independence, as we believe 2 years to be insufficient and unlikely to reflect any substantial change in the executive board of the company. We take the opportunity to note that many INEDs are not truly independent in the Hong Kong market, as they are often nominated by controlling shareholders. A mechanism to enhance their independence, such as a vote of independent shareholders only, could be introduced to greatly increase their legitimacy and ability to represent the views of minority investors.

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?

N/A

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, we strongly support this proposal.

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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?

We welcome the proposal to require issuers to have at least one director of a different gender on the nomination committee, as this can support the achievement of the company's diversity policy. We encourage HKEK to go even further and consider raising the bar for the gender diversity requirement for the entire board from one female director to at least 30 percent.

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 support the proposal to require issuers to have and disclose a diversity policy, and share HLEX's observation that there is room for improvement in the disclosure of numerical targets and timelines for achieving board diversity. Diverse boards and decision management teams are likely to bring different experiences and perspectives, thereby improving the quality of decision making, and to enjoy greater legitimacy among a broader range of stakeholders.

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.

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 that separate disclosure of the gender ratio among senior management and the workforce would be useful.

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?

N/A

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, we agree with the proposal to emphasise the board's responsibility for the company's risk management and internal controls, as well as for the annual effectiveness reviews of the latter. We would also welcome greater emphasis and clarification on the respective roles of management, the audit committee, the internal audit function, and the risk committee.

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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.

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.

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 that specific disclosure on the issuer's policy on dividend payments and the board's dividend decisions during the reporting period. However, we recommend that this disclosure requirement is broadened to include share buybacks and capital management policies more generally.

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 support the introduction of a Listing Rule requirement for issuers to set a record date, which is currently only included in HKEX non-binding guidance documents. It is important that the record date is set closer to the shareholder meeting date (preferably less than a week), to avoid situations of empty voting and ensure that investors can recall loaned securities to vote on key issues.

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.

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.

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

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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?

N/A

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