

# Hong Kong Capital Markets Update

ISSUE 2024-03 | June 2024



## HKEX's consultation on review of Corporate Governance Code

On 14 June 2024, the Stock Exchange of Hong Kong Limited (the "Exchange") published a [consultation paper](#) ("Consultation") seeking market feedback on proposed changes to the Corporate Governance ("CG") Code. The deadline for submission is 16 August 2024.

### Key Proposals

<b>Board Effectiveness</b>	<p><b>Designation of Lead INED</b></p> <ul style="list-style-type: none"> <li>Require issuers without an independent board chair to designate one independent non-executive director ("INED") as a Lead INED [<a href="#">New Code Provision ("CP")</a>].</li> </ul> <p><b>Mandatory director training</b></p> <ul style="list-style-type: none"> <li>Require all directors to receive mandatory continuous professional development each year on specified topics; with First-time Directors<sup>1</sup> required to complete a minimum of 24 training hours within 18 months of their appointment [<a href="#">New Listing Rule ("LR")</a>].</li> <li>Require enhanced disclosure in the CG Report on director training [<a href="#">Revised Mandatory Disclosure Requirement ("MDR")</a>].</li> </ul> <p><b>Board performance review</b></p> <ul style="list-style-type: none"> <li>Require a board performance review to be conducted at least every two years, with specific disclosure in the CG Report [<a href="#">Upgrade to CP</a>].</li> </ul> <p><b>Disclosure of board skills matrix</b></p> <ul style="list-style-type: none"> <li>Require issuers to maintain and disclose a board skills matrix in the CG Report, with enhanced disclosures on the board's skills [<a href="#">New CP</a>].</li> </ul> <p><b>Overboarding INED and directors' time commitment</b></p> <ul style="list-style-type: none"> <li>Hard cap on overboarding (i.e. an INED must not concurrently hold more than six listed issuer directorships), with a three-year transition period [<a href="#">New LR</a>].</li> <li>Require the nomination committee to annually assess and disclose its assessment of each directors' time commitment and contribution to the board [<a href="#">New MDR</a>].</li> </ul>
<b>Independence of INED</b>	<p><b>Independence of INEDs after nine years</b></p> <ul style="list-style-type: none"> <li>Hard cap on the tenure of INEDs who have served the issuer for nine years or more ("Long Serving INEDs"), with a three-year transition period. Long Serving INEDs will be allowed to serve on the board of the same issuer again upon completion of a two-year cooling-off period [<a href="#">New LR</a>].</li> </ul>
<b>Board and Workforce Diversity</b>	<ul style="list-style-type: none"> <li>Require issuers to have at least one director of a different gender on the nomination committee [<a href="#">New CP</a>].</li> <li>Require an annual review of the implementation of the board diversity policy [<a href="#">Upgrade to MDR</a>].</li> <li>Require issuers to have and disclose a diversity policy for their workforce (including senior management) [<a href="#">New LR</a>].</li> <li>Require separate disclosure of the gender ratio of (i) senior management and (ii) the workforce (excluding senior management) [<a href="#">Revised MDR</a>].</li> <li>Codify the existing guidance on the arrangements during temporary deviations from the requirement for issuers to have directors of different genders on the board [<a href="#">New LR</a>].</li> </ul>
<b>Risk Management and Internal Controls</b>	<ul style="list-style-type: none"> <li>Require 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 [<a href="#">Upgrade to MDR</a>].</li> <li>Other enhancements to the risk management and internal control sections of the CG Code.</li> </ul>
<b>Dividends</b>	<ul style="list-style-type: none"> <li>Require issuers to disclose specific information in the CG Report regarding their policy on payments of dividends, as well as the dividend decisions made by the board during the reporting period [<a href="#">New MDR</a>].</li> </ul>

<sup>1</sup> Directors who: (a) are appointed as directors of a Hong Kong listed issuer for the first time; or (b) have not served as a director of a Hong Kong listed issuer for a period of three years or more prior to their appointment.

## **Background**

The Exchange reviews its corporate governance 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.

This Consultation aims to:

- (i) improve board effectiveness;
- (ii) strengthen board independence;
- (iii) further promote board and workforce diversity;
- (iv) enhance risk management and internal controls; and
- (v) promote better capital management.

## **Board effectiveness**

The board is central to good corporate governance, therefore it is imperative for the board to have a suitable balance of skills, experience and diversity of perspectives to enable it to function effectively in an evolving market.

### ***Designation of Lead INED***

To facilitate and strengthen communication among INEDs and shareholders, the Exchange has proposed a new CP for issuers without an independent board chair to designate one INED as a Lead INED. The Lead INED should serve as a channel of communication to enable shareholders to understand the actions taken by INEDs in the performance of their responsibilities, and as intermediary between directors and shareholders where contact through normal communication channels is inadequate.

As INEDs are not responsible for the day-to-day management of the issuer, the Lead INED is not expected to discuss the issuer's results and operational matters with investors, but he/she would be expected to attend the issuer's annual general meeting. The Exchange also stated that the role of Lead INED is not intended to create a separate or higher level of responsibilities or liability relative to other INEDs or to duplicate other existing board roles.

### ***Mandatory director training***

To help ensure directors continue developing and refreshing their skills for the effective functioning of the board, the Exchange has proposed to require all directors to participate in mandatory continuous professional development, without specifying a minimum number of training hours. For First-time Directors, the Exchange has proposed a minimum training of 24 hours during the first 18 months following their appointment. The training topics reflect key areas that directors would be expected to know and to refresh their knowledge on an ongoing basis. This would help mitigate the risk of breaches that result in disciplinary cases.

### ***Board performance review and board skills matrix***

To help issuers evaluate their board's skill and performance while also identifying areas for improvement and development, the Exchange has proposed to require issuers, on a "comply or explain" basis, (i) to conduct a board performance review at least every two years; and (ii) to maintain a board skills matrix. In addition, to improve transparency to the market and enhance investors' understanding of the board, both the board performance review and the board skills matrix are required to be disclosed in the CG Report as part of the proposals.

### ***Overboarding INED and directors' time commitment***

It is important for INEDs to be able to devote sufficient time and attention to the company's affairs, which is why the Exchange has proposed to mandate a six-directorship cap for INEDs. That would mean an INED cannot take up a further director appointment if this would result in such individual holding more than six Hong Kong listed issuer directorships.

A three-year transition period has been proposed to enable an orderly phasing out of overboarding INEDs. The Exchange has also proposed 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, taking into consideration their professional qualifications, work experience, external time commitments and other factors.

## **Board independence**

The tenure of non-executive directors has been an area of focus for institutional investors, who have stated that serving the same Hong Kong listed issuer for more than nine years is relevant to their determination of a non-executive directors' independence. The Exchange believes that periodic board refreshment, in particular the appointment of new INEDs, can help facilitate board diversity and bring new perspectives to the board.

In response, the Exchange has proposed to provide a hard cap of nine years on the tenure of INEDs, with a three-year transition period to ensure board continuity and provide sufficient time for affected issuers to conduct proper succession planning. The Exchange also proposes a cooling-off period<sup>2</sup> of two years, after which the previous Long Serving INED would be allowed to serve as the INED of that issuer again.

## **Board and workforce diversity**

While some progress has been made since diversity was emphasized in the amendments to the CG Code in 2022, the percentage of single gender boards as of 31 December 2023 was still approximately 19%, which suggests room for further improvement.

To promote greater diversity, the Exchange has proposed to require issuers:

- (i) to have at least one director of a different gender on the nomination committee;
- (ii) to conduct and disclose the annual review of board diversity policy;
- (iii) to have and disclose a diversity policy for their workforce (including senior management);
- (iv) to provide separate disclosure of the gender ratio of senior management and the workforce (excluding senior management); and
- (v) to immediately publish an announcement containing the relevant details and reasons if they fail at any time to have directors of different genders on the board and re-comply with the requirement within three months after failing to meet such requirements.

The Exchange believes that efforts to promote greater diversity and inclusion should extend beyond the boardroom to the wider workforce. Given the nomination committee's key role in the appointment and re-appointment of directors, improved gender diversity on the nomination committee would also help facilitate diversity in the company's overall talent pool. In addition, having workforce diversity policy in place will assist issuers to set diversity targets and objectives across the company.

## **Risk management and internal controls**

In the performance of its enforcement function, the Exchange has found that disciplinary cases often involve failure to establish an effective risk management and internal control systems ("RMIC Systems"), or inadequate monitoring of the RMIC systems to ensure their continued effectiveness. Given the importance of RMIC Systems to good corporate governance, issuers and their boards must adopt a process of continuous monitoring and review of their RMIC Systems, while providing transparency and accountability to investors and the market through detailed disclosures of their review.

In this regard, the Exchange proposes to require listed issuers to review RMIC Systems' effectiveness at least annually and provide detailed disclosures in the CG Report. The board's responsibility for the issuer's RMIC Systems and its annual review will also be emphasized in the relevant principle of the CG Code.

## **Dividends**

Dividend payments are an important means of investor return and a basic component of investment decision-making. The board's approach to dividend payments should be clearly articulated in the issuer's dividend policy to enable investors to assess the issuer's capital discipline.

As such, the Exchange has proposed to require the issuers to:

- (i) disclose the aim or objective of the dividend policy, as well as the key factors that the board will take into account when deciding whether to declare, recommend or pay any dividend (or state the fact and disclose the reason for the absence of a dividend policy);
- (ii) provide a confirmation that all dividend decisions were made in accordance with the dividend policy (or an explanation of any deviations from the issuer's dividend policy);
- (iii) provide an explanation of the reasons for material variation in dividend rates when compared to the previous corresponding period; and
- (iv) disclose the reason for not declaring any dividends (if the issuer decides not to) and the measures that the issuer intends to take to enhance investors' return (if any).

---

<sup>2</sup> During the cooling-off period, such Long Serving INED 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.

## Other proposals

The Exchange has also proposed certain minor amendments to the Listing Rules, including:

- (i) codifying the existing guidance to require issuers to set a record date for general meetings and for receiving entitlements;
- (ii) codifying the recommended disclosure in the annual report regarding issuers' modified auditors' opinion;
- (iii) clarifying the expectation on provision of monthly updates to the board; and
- (iv) aligning requirements applicable to the three mandatory board committees (nomination, audit and remuneration committee), on establishing written terms of reference and arrangements during temporary deviations from requirements.

## Proposed effective date

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

In respect of Long Serving INEDs and overboarding, the Exchange acknowledged the need for additional time to allow affected issuers to appoint suitable directors and adjust board composition and therefore proposed a three-year transition period. This means, the relevant rules would apply from 1 January 2028 onwards, with compliance required by the conclusion of the annual general meeting following 31 December 2027 at the latest.



---

If you have any questions about the matters discussed in this publication, please feel free to contact the following capital market partners.

### **Paul Lau**

Partner, Head of Capital Markets and Professional Practice  
KPMG China  
+852 2826 8010  
[paul.k.lau@kpmg.com](mailto:paul.k.lau@kpmg.com)

### **Louis Lau**

Partner, Capital Markets Group  
KPMG China  
+852 2143 8876  
[louis.lau@kpmg.com](mailto:louis.lau@kpmg.com)

### **Mike Tang**

Partner, Capital Markets Group  
KPMG China  
+852 2833 1636  
[mike.tang@kpmg.com](mailto:mike.tang@kpmg.com)

### **Terence Man**

Partner, Capital Markets Group  
KPMG China  
+86 10 8508 5548  
[terence.man@kpmg.com](mailto:terence.man@kpmg.com)

### **Elton Tam**

Partner, Capital Markets Group  
KPMG China  
+852 2978 8188  
[elton.tam@kpmg.com](mailto:elton.tam@kpmg.com)

[kpmg.com/cn](http://kpmg.com/cn)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2024 KPMG, a Hong Kong (SAR) partnership and a member firm of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organisation.