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16 August 2024

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place
Central
Hong Kong

Dear Sirs

**Re: The Exchange's Consultation Paper
Corporate Governance Code and Related Listing Rules**

The Hong Kong Institute of Directors ("HKIoD") is pleased to forward our response to the captioned paper.

The Hong Kong Institute of Directors ("HKIoD") is Hong Kong's premier body representing directors working together to advance corporate sustainability in creating long-term value for companies, their owners, stakeholders, humankind and Planet Earth through advocacy and standards-setting in corporate governance and director professionalism. We are committed to contributing towards the formulation of public policies that are conducive to the advancement of Hong Kong's international status.

In developing the response, we have consulted our members.

Should you require further information regarding our response, please do not hesitate to contact me on tel no. [REDACTED].

Thank you very much for your kind attention.

Yours sincerely

THE HONG KONG INSTITUTE OF DIRECTORS

Enc

cc:

Issued on: 16 August 2024

The Exchange's Consultation Paper

Review of Corporate Governance Code and Related Listing Rules (June 2024)

In relation to the captioned consultation paper, The Hong Kong Institute of Directors has the following views and comments.

General Comments

We welcome the latest exercise to review and update the Corporate Governance Code and related Listing rules. Like in the 2021 review exercise, we do not agree with every element of the Exchange's proposals. Where we differ, they are about the means chosen rather than end aspirations.

We think requiring and empowering all INEDs to collectively perform is a better solution to designating a Lead INED. We do not tend to have majority independent boards in our market. The Lead INED will likely be chosen from just a small group (i.e., one-third, or a minimum of three) anyway. Independent board chairs working together with all the other INEDs can be more helpful.

On directors' time commitment and the concern over overboarding, we saw oddities in the proposal, and in any case, we believe the emphasis should be on whether a director and the issuers involved have made an honest assessment as to the ability to devote sufficient time, not a broad-brush requirement on the director to limit the number of (Hong Kong only) INED positions one may hold.

To the question of how long is too long for an independent director, the answer ought to be "it depends". It is the independence of mind that matters, not tenure. If there is the concern that long tenure will decrease firm value, there are successful well-performing companies with long-serving independent directors, longer than 9 years. There are also cases/examples where the long tenure is a plus factor, helping build a rapport that is more conducive to rigorous oversight.

We certainly support the notion of making continuous professional development mandatory for all existing directors. To make true the purpose and effect of continuous training, a board (and its nomination committee) should have a suitable professional development policy for its directors. The substance of useful training is more important than sheer hours. For those who do have no directorship training nor experience whatsoever, requiring initial training is prudent. Initial directorship training should be a prerequisite *prior to* the director coming on board, however. The Exchange should strive to encourage individuals to have become ready for a board seat prior to appointment, rather than to start acquainting themselves with the demands of directorship post-appointment. We have recommendations to augment the proposal to go further.

Consultation questions

Subject to the general comments above, we state below our response to specific questions as set out in the Consultation Paper.

Designation of Lead INED

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?

HKIoD Response:

➤ **STRONG RESERVATIONS**

- We had the occasion to discuss with the Exchange our views on introducing Lead INED in a 2020 soft consultation. At the time, HKIoD released a position paper, followed by a press release. We maintain our views.
 - For the position paper, follow this [<https://www.hkiod.com/wp-content/uploads/2024/08/HKIoD-position-on-INED-and-Lead-INED-20200825.pdf>]
 - For the press release, follow this [https://www.hkiod.com/wp-content/uploads/document/position_papers/20201007_HKIoD%20Voices%20Reservations%20about%20Lead%20INED_ENG.pdf]
- The Exchange states as rationale for the proposal, that “[a] Lead INED offers a clear point of contact for potential investors and existing shareholders providing them with independent insight on aspects of an issuer’s governance such as the quality of board discussions on matters including corporate strategy and INED performance.” Consultation Paper para 34. The Exchange also expects the Lead INED to serve as a channel of communication to enable shareholders, in particular minority shareholders, to understand the actions taken by INEDs in the performance of their responsibilities.
- We are for governance device or practice that can increase transparency, integrity and give the under-represented shareholders better voice. Due to the many constraints and practical realities that exist in the Hong Kong market, however, we do not believe the appointment of a Lead INED is the solution.
 - Beneficial effect not apparent: Having a number of INEDs on a board is meant to help widen the opinion base and to generate balanced views. To have a Lead INED is then to help coordinate among the INEDs and to help liaise between the INEDs and the Chair. The emphasis on having a Lead INED risks disrupting this balance. We do not tend to have majority independent boards in our market. The Lead INED will likely be chosen from just a small group (i.e., one-third, or a minimum of three) anyway. A Lead INED should be more useful when there is majority INED.
 - Ill-effect on the other INEDs: The appointment of a Lead INED can affect the other INEDs’ perception of their roles and responsibilities, and in turn their desire and motivation to perform. When the designated lead is to deal with investors and stakeholders, the other INEDs may wrongly think they can just remain in the back seat and be passive.
 - What will you get out of the Lead INED?: There may be many, even too many, inquiries falling on the designated lead. Although the designated lead, like any director, should learn about the issuer and be empowered to acquire information from management, being an INED will just not know all about the company. Consultation Paper para 29 wants to assure us that the purpose is not for the designated lead to discuss results and

operational matters, but in reality things are never so clear cut. Queries on “INED insights” and “INED performance” will intertwine with rumours, doubts or patterns about company results or operation matters. This puts a strain, or a burden on what the designated lead can say or want to say in response to an inquiry. Under such strain or pressure, the designated lead may say no more than stock answers that have been prepared for them by the IR department or company advisors, yielding information that adds little to what is already available. If getting more useful information to investors to facilitate investment decision is the purpose, the proposal may not in fact achieve that purpose.

- Who will do it?: This proposal will mean a heightened liability for the designated lead (even though the Consultation Paper would not concede; see para 28). Who will take up that role? With meagre compensation available to INEDs, they will not find it an easy choice to want to become a Lead INED while other INEDs can remain in the back seat.
 - But there is also the possibility of another perverse scenario, that someone (someone not necessarily qualified) will seize the moment, jump to take up such a role, milk a higher fee (higher than now, higher than the others), and negotiate with the issuer a scope and protocol to do things in such a mechanical, perfunctory way that covers the individual’s risk of liability but is not effective towards the intended purpose of the proposal.
- Can there be better solutions?
 - INEDs to collectively perform: INEDs have an important role to play, but they are often in the minority. When the designated lead is just one out of one-third or a minimum of three, we should rather encourage *all* INEDs to collectively be that communication channel and provide those insights sought under the Lead INED concept. Meetings with shareholders and stakeholders can be set up prior to general meetings or at other times for *all* INEDs to take part. Having an INED report section in the annual report is another measure to enhance the accountability of INEDs.
 - Independent chair: If the issuer has an independent board chair, the Exchange will consider the independent chair to have fulfilled the function of the Lead INED. In situations where the chair is also the CEO, the Exchange would consider the need for a Lead INED as more important. Consultation Paper para 24-25. HKIoD recognises separating the role of the chair and the CEO as one useful board governance device which can be good for corporate governance in the right context. Independent board chairs working together with all the other INEDs can be more helpful in serving the purpose and rationale of the Lead INED proposal.
 - Majority INEDs?: We said as early as in the 2011 CG Code review consultation, that to move towards majority INED can make INEDs collectively better able to perform their director roles. With INEDs comprising the majority, their active involvement in board matters becomes more necessary and their time commitment to do so better value. It should also allow much more room for meaningful rotation and refreshment through careful succession planning.

Question 2 Regarding continuing 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 or more prior to their appointment?
- (d) Specify the specific topics that must be covered under the continuous professional development requirement?

HKIoD Response:

- Generally:
 - We have recommendations to augment the proposal to go further. The proposal should also distinguish basic directorship training from company business specific training, and initial training from continuing training.
- As to (a), mandatory CPD for *existing* directors:
 - AGREE IN PRINCIPLE
 - We certainly support the notion of making continuous professional development mandatory for all *existing* directors.
 - On not specifying minimum number of training hours:
 - The proposal does not want to specify a minimum number of CPD hours. Consultation Paper para 41. To make true the purpose and effect of continuous training, this will assume – actually, require – that the board (and its nomination committee) to have a thorough professional development policy for each of its directors, detailing at the individual level the kind of training that would be needed and beneficial and the pace and progress for attaining those training. HKIoD will be happy to work with the Exchange in guiding issuers to come up with their professional development policies.
 - The substance of useful training is more important than sheer hours. But there is the worry that, without specifying training hours, some issuers will just go with a token small number of hours, vitiating the purpose of the proposal. For this reason, the Exchange can go further to specify some number of CPD hours.
 - If we take the Exchange’s proposal (albeit for First-time Directors to have initial training) as a starting point, 24 hours over 18 months will average out to be 16 hours a year. We would not object to a minimum of 16. Although HKIoD only mandates 10 hours minimum for membership renewal, roughly 80% of our members report a completion of between 10-20 hours each year. Roughly another 10% report a completion between 21-40 hours. To be more ambitious, 20 hours per year is not too demanding. Completing 20 hours of CPD is our recommended best practice.
- As to (b), training for First-time Directors:
 - AGREE IN PRINCIPLE but think the proposals should stipulate initial training as a prerequisite *prior to* the director coming on board.
 - HKIoD believes all company directors, when they first assume their posts, should have a firm grounding of the skills, knowledge and

qualities required to meet the corporate governance demands of today. HKIoD long advocates the importance of corporate governance training, and we want to emphasise that proper initial training for first-time directors is one key aspect of the total quality of corporate governance training.

- For those who have no directorship training nor experience whatsoever, requiring initial training is prudent. Initial directorship training should be a prerequisite *prior to* the director coming on board, however.
- The Exchange should strive to encourage individuals to have become ready for a board seat prior to appointment, rather than to start acquainting themselves with the demands of directorship post-appointment.
- Recommendation: Attaining HKIoD Diploma level credential (or higher) should qualify as initial training now proposed for First-time Directors.
 - We should recognise people who had attained basic directorship training and made themselves ready to become a director.
 - Aspiring directors are encouraged to seek out training programmes and credentials that HKIoD can offer. Completion of HKIoD Diploma level study (which requires 24 hours) should qualify as basic directorship training.
 - HKIoD has on its rosters members who had already attained HKIoD Diploma level (or higher) credentials. They are ready for board appointment, including that for listed companies.
 - Conceivably, someone could have started to work towards our Diploma but got an appointment halfway. With proper accounting and recordkeeping, the individual ought to be able to apply the already completed training towards the 24/18 initial training requirement now proposed. Upon completion of the Diploma requirements, they should then be required to meet CPD requirements going forward, as existing directors.
- Recommendation: Allow those who had been directors before to satisfy the requirement through accredited Update/Bridging Course(s) that HKIoD can provide.
 - The Consultation Paper includes a proposal that, those who have not served as director of an issuer for three years or more will be subject to the 24/18 initial training requirement. We think if the individual can demonstrate that they have had credible board-readiness training, they should only be required to go through stipulated Update/Bridging Course(s), and then be required to meet CPD requirements going forward, as existing directors. HKIoD will be pleased to work with the Exchange to design and offer accredited Update/Bridging Course(s).
- As to (c), the definition of First-time Directors:
 - AGREE in principle, but some RESERVATIONS
 - The definition should seem reasonable, but we surmise there will be some directors who have directorship certification or experience gained from other markets that issuers should want to invite to their board. To require credentialed or experienced directors to complete the 24/18 initial training requirements as proposed could turn the recruitment into an uninviting prospect.
 - Recommendation: Allow experienced directors with overseas experience (or recognised credentials) to fulfil requirement with Transition Course(s) that HKIoD can provide.

- We can appreciate that credentialed/experienced directors from other markets will need to become familiar with the local environment. We recommend Transition Course(s) for them, however. And they should then be required to meet CPD requirements going forward, as existing directors. HKIoD will be pleased to work with the Exchange to design and offer accredited Transition Course(s).
- As to (d), on topics to be covered under the CPD requirement:
 - As to the 5 categories, generally AGREE.
 - HKIoD already offers a variety of courses that fit into the 5 categories. We have concrete plans to augment our course offerings to further enhance training content pertaining to directorship in the listed company context to be able to meet the initial training needs for First-time Directors.
- Other related matters
 - Training format
 - The proposal does not mandate the format of the training (e.g., in person or online) or the training provider that must be used. Consultation Paper para 50. We tend to believe that the knowledge and skills that are the substance of director training are better learned in structured programmes with formal classes led by experienced facilitators. For the initial directorship training at least, the Exchange may want to specifically exclude certain learning modes which may raise doubts as to effectiveness.
 - Training content: business vs directorship
 - The initial training (and CPD) being proposed is not to mean the same as general induction training. Consultation Paper para 57. We concur. On implementation, the Exchange may want to further distinguish training content specific to a company's business versus training content pertaining to directorship and governance skills and knowledge.
 - In the market today, it is usually a listing applicant's sponsor and advisors who shortly before listing arrange for sessions to inform would-be directors of their obligations once the issuer becomes publicly listed. Regrettably, the exercise was sometimes seen as just some hoops to be jumped en route to listing and they are done in a perfunctory manner. HKIoD believes it is crucial for issuers to provide proper induction to newly appointed directors, whether they are beginning or seasoned company directors. Induction ought to be more about company specific matters, and for this reason a proper induction should be of particular importance to the NEDs/INEDs.
 - We will concur that the initial directorship training for First-time Directors needs to cater to a listed company context. Listing Rules and the CG Code, price sensitive information disclosure, the Takeovers Code, financial reporting, etc. will come to mind.
 - Some practising professionals may have gained substantial knowledge or otherwise become very familiar with some of these subject areas. The Exchange may want to consider an exemption scheme so they can waive out of training in these topic areas. The issue then is whether to reduce the hours required or require training in other topics to fill the gap. Any exemption should also require substantive proof of actual knowledge and practical experience in the topics sought to be

waived. Merely holding a practice licence or credentials should not be enough.

- Training provider: internal or external?
 - Issuers should have some freedom and leeway in determining whether to have training done internally or externally.
 - For business training content, credible third-party trainers and service providers can give issuers a wider range of expertise and market intelligence to add depth. When the subject touches on company specific matters such as strategy and marketing plans, however, internal training led by internal staff may be more appropriate and even necessary. The Exchange, however, may still want to have some safeguards to ensure that internal training claimed to have been done is genuine.
 - For directorship/governance training, it may be that issuers and their boards should look more to professional bodies (like HKIoD), credible institutions or third-party service providers. The Exchange may want to specifically require such in the proposal.

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

HKIoD Response:

➤ NO STRONG VIEWS

- We do not have major issues with the proposal.

Board performance review

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?

HKIoD Response:

➤ AGREE IN PRINCIPLE

- We certainly agree with the need and benefits of periodic board performance review.
- Frequency of review:
 - Some of our members consider “every two years” being too frequent, and three years may better mesh with the typical 3-year rotation of a board seat. We are aware of some jurisdictions (though not many) that specify a frequency of 3 years.
 - Some of our members consider that annual review is not too frequent and indeed necessary. We are aware of many jurisdictions around the world specifying annual board performance review.
 - Board work, though continuous, does run on some annual cycle. It may not be unreasonable to have board performance review each year. Issuers should feel free to design their performance review methodologies over a 2- or 3- year period to possibly have mini-reviews in interim years.
 - Irrespective of the frequency of the evaluation, the board should ensure that a formal process is undertaken and that during interim periods, the findings of the previous review are addressed.
- Level (and scope) of evaluation:

- Some members consider that, in the current Hong Kong context, the CG Code should only call for board performance review at the full board level. They, however, will not object to encouraging issuers and their boards to also undertake individual director performance review under a methodology that is right for them. This could be an RBP, or the notion can be embodied in relevant guidance materials.

Board skills matrix

Question 5 Do you agree with our proposal to introduce a new CP requiring issuers to maintain a board skills matrix and make disclosure as set out in CP B.1.5?

HKIoD Response:

- AGREE
 - A board skills matrix is an important tool for a board to identify skill gaps, and thereby assist in board recruitment/refreshment. To articulate how the combination of skills, experience and diversity (of various attributes, not just gender) of their directors is aligned with the issuer's strategic objectives and desired culture is to give useful information to investors to form an opinion on the issuer's approach to value creation.

Overboarding INED and directors' time commitment

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?

HKIoD Response:

- As to (a), DISAGREE
 - HKIoD believes all directors must devote sufficient time and attention to the affairs of the company. See, e.g., HKIoD Guidelines for Directors; HKIoD Guide for Independent Non-Executive Directors; and HKIoD Code of Conduct. A director, whether ED or NED/INED, should acknowledge to the issuer that there will be sufficient time to meet obligations as a board member. Yet, we do not agree with the general premise of the proposal.
 - Oddities in the proposal:
 - The proposal only seeks to address INEDs holding multiple directorships at Hong Kong listed issuers. Consultation Paper para 95. This may encompass 23 individuals serving on 181 issuers (7% of all Hong Kong issuers). Consultation Paper para 81.
 - The proposal would specifically exclude other commitments (such as full- or part-time job, public service, or directorships in non-profits or statutory bodies) in counting the cap of 6. Consultation Paper para 95.
 - Who is to judge?: Situations vary from individual to individual and from issuer to issuer. A certain number of INED positions may be too many for some, but quite manageable for others. We believe the emphasis should be on whether a director and the issuers involved have made an honest judgment as to the ability to devote sufficient time, not a broad-brush requirement on the director to limit the number of (Hong Kong) INED positions one may hold.
 - Keep the soft cap: For the reasons above, it may be wise to avoid mechanistic limits but to allow issuers and their directors to evaluate the situation according

to their circumstances. There is merit to maintain the current CG Code provision B.3.4(b), which calls for the next issuer(s) beyond 6 to enlist the service of the same person to make an explanatory statement as to why the board believes the individual would still be able to devote sufficient time.

- Issuers within the 6 whom the person is already serving will be diluted of the person's time and attention. Make those issuers disclose that fact prominently and give appropriate explanations.
- Honest assessment: NEDs/INEDs should disclose their other significant commitments (local or overseas, private or public, profit-making or charitable) before appointment in order for the issuer to make an assessment on whether the NED/INED can devote sufficient time. NEDs/INEDs should timely disclose to the issuer(s) they are serving under any change to his significant commitments.
 - In making the assessment, the director and the issuer involved ought to be aware of some practical factors that should work to discourage overboarding. For instance, board/committee meetings usually happen around the same time. The hump in workload over a short period of time can spread one thin, even for an otherwise diligent capable person.
 - Workload will require a holistic assessment, but in terms of directorship commitment, company size / market capitalization can be a factor. Overseeing a 100M USD/50,000 employee issuer is likely different from that with regard to a 10M USD/20 employee issuer.
- Supply of quality INEDs: the proposal can have the effect of creating more vacancies for more people, including our members, to be appointed as INEDs. Certainly, we need to find individuals who have the skills, knowledge and qualities to meet corporate governance demands of the day. The less encouraging reality is, with meagre fees but ever-increasing risk of liability, there may be fewer people than we would hope to want to become INEDs. On the more positive side, HKIoD maintains a roster of members who have positively indicated their willingness and who have conscientiously equipped themselves to become INEDs.
- As to (b), on the transition period
 - NO STRONG VIEWS, given that we disagree with the general premise of the proposal.

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?

HKIoD Response:

- AGREE
 - As discussed above in our response to Question 6, the focus should be on the analysis and disclosure called for in Question 7.

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 colling-off period?

(c) With the proposed three-year transition period in respect of the implementation of the hard cap?

HKIoD Response:

- As to (a), DISAGREE.
 - It is the independence of mind that matters, not tenure. To the question of how long is too long for an independent director, the answer still ought to be “it depends”. See further below.
- As to (b), NO STRONG VIEWS given that we do not agree with the premise of the proposal.
 - We note, however, that the situation for a professional adviser may not be the same as someone who had actually been on the board. And a typical rotation of board seat is 3 years, not 2.
- As to (c), NO STRONG VIEWS, given that we disagree with the general premise of the proposal.
- We do not agree with the premise of the proposal for a number of reasons.
 - Inconclusive evidence:
 - The proposal presumes that a tenure of 9 years or longer will impair independence. A significant portion of our members do not believe there is conclusive evidence to support that presupposition.
 - If there is the concern that long tenure will decrease firm value, there are successful well-performing companies with long-serving independent directors, longer than 9 years.
 - If there is the concern that long-serving must mean a loss in the ability to monitor the company, it must be stated that the key issue is the independence of mind, not tenure of service.
 - Longer serving INEDs can be a plus factor for board dynamics. There are cases/examples, where the long tenure builds a rapport that is more conducive to rigorous oversight.
 - Longer serving INEDs play a stabilising role in times of change.
 - This may be an important phenomenon among state-owned enterprise issuers. Some of our members report that there are often frequent changes of (senior) management among SOE issuers. When that happens, longer serving INEDs play a stabilizing role, providing institutional memory.
 - A hard cap can backfire:
 - To impose a hard cap may have the effect of pushing board renewal, but such changes in board membership can be disruptive instead, hurting board dynamics. A hard cap can backfire.
 - Imposing a hard cap can mean a strategic constraint on the issuer. Some long-serving INEDs can indeed maintain an independence of mind and be of value to a firm’s strategy. Imposing a hard cap can backfire.
 - Can there be other solutions to the problem?
 - Independent shareholder vote
 - In the 2021 CG Code review, there was a proposal to require independent shareholders’ vote to re-elect a Long Serving INED. That proposal received 65% support. HKIoD had indicated agreement to that proposal. To require independent shareholder vote would mean people connected with the large/controlling shareholders cannot vote, doing away with the worry that the large shareholder can still sway the results. This will have the effect of increasing transparency and integrity.

- Look for diversity in tenure of service
 - Rather than a hard limit of 9 years, the Exchange may want to look into whether an issuer's board has sufficient diversity in terms of tenure in length, balanced mix of longer serving and newer members of the board, to give different perspectives, to avoid groupthink.
- Require more thorough disclosure on assessment and appraisal criteria, and board renewal/board succession plans.
- Majority INEDs?: A better alternative may be to move towards majority INED, to make INEDs collectively better able to perform their director roles and allow much more room for meaningful rotation and refreshment through careful succession planning.

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?

HKIoD Response:

- AGREE
 - We have no issue with this proposal.

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?

HKIoD Response:

- WE HAVE RESERVATIONS
 - We aspire to and we advocate for the good end of board diversity, but we have reservations as to the means chosen in this proposal.
 - Diversity is surely important in contributing to a board's effectiveness and quality of decisions. But it is a deeper level of diversity that we should be after, not diversity merely on the surface (e.g., tokens) nor compliance for the sake of compliance (e.g., quotas).
 - Diversity is not and should not be just about gender diversity. Indeed, the Exchange's Consultation Conclusions to the 2021 CG Code review stated (in para 83) that issuers are encouraged to include a broader spectrum of diversity perspectives within their policies, recruitment approach and in their corporate reporting as appropriate.
 - We can agree that men or women can operate at their best when there is a gender balance. We can also agree that a board composed of members with different attributes (not just gender) can add to the group dynamics beneficial to the collective problem solving and decision making. But a compliance-focused implementation can veer us into ostensible achievements in diversity but in fact not. A group with both genders represented can still think alike and get themselves into groupthink.
 - There is a strong sentiment that, to provide an impetus, we can start the journey with single gender boards (or committees) adding one member of the absent gender. Plausible, but caution. Diversity does not easily come about when there is only one different person on the board (or a committee).
 - If an issuer is to look for that new member of the absent gender from similar social circles or business relationships, identifying with those who share a similar outlook or thought process, the resulting board will still not be too diverse.

- If as issuer is bent on filling that one seat to meet the requirements, the new appointee could become the odd one out as to make the directorship ineffective. Or the issuer may have been well-meaning to recruit, but the new appointee, now having taken up a once seemingly remote board /committee seat opportunity, plays oneself safely into a token role and thereby not be the rigorous participant to add depth to the boardroom conversation.
- The more important principle should be on the need to build an effective board. It must remain the decision of an issuer's board (and its nomination committee) to determine the right size and mix of attributes of the board members to best suit the issuer's needs. The best candidate that can fill identified gaps in the skills matrix should join the board. The key criteria for a board appointment must still be on the merits of a candidate's likely contribution to devising and attaining a company's objectives, not about recruiting tokens or names against some quotas or targets, nor to appear to be catering to some social objectives.
 - For the current proposal, the principle must remain that it should be for the one candidate with the skills and attributes (not just gender) that is most suitable for the position to fill the role.
- We do not endorse quotas. Brand name asset management firms working with large portfolios of investee companies do not necessarily endorse such either. We do echo a principle of inclusiveness, that everyone regardless of gender, ethic or other background attributes can succeed on merit.
- Majority INEDs?: A move towards majority INED can make INEDs collectively better able to perform their director roles and be the impetus for issuers to drive for board diversity not just at the surface level (composition and demographics) but also at the deeper level (varying thinking processes and mental frameworks).

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)?

HKIoD Response:

➤ AGREE

- Issuers should have a well thought out policy to achieve diversity, especially the deeper level of diversity we subscribe to.

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?

HKIoD Response:

➤ AGREE

- It is reasonable to review the board diversity policy periodically to ensure effective implementation.

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?

HKIoD Response:

➤ NO STRONG VIEWS

- We subscribe to the notion of a deeper level diversity, not just gender, but we can agree that it should not be too difficult for issuers to collect and collate the data called for in this proposal.

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 (of the Consultation Paper)?

HKIoD Response:

➤ NO STRONG VIEWS

- We subscribe to the notion of a deeper level diversity, not just gender, but we can agree that it should not be too difficult for issuers to make the required disclosure in the event of a deviation.

Risk management and internal control

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
- (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?

HKIoD Response:

➤ As to (a) and (b), AGREE

- The proposals are to remind boards of the importance of their role and responsibility in an issuer's risk management and internal control (the "RMIC"). We encourage issuer boards to design appropriate processes for the review of their RMIC Systems, giving due consideration to their particular circumstances and risk profile. Consultation Paper para 148. We would also encourage issuers to enhance their disclosure, to give sufficient detail to enable an understanding of the review process conducted. Consultation Paper para 140. The Exchange will issue guidance. Consultation Paper para 147. HKIoD will be happy to collaborate with the Exchange in this regard.

Question 16 Do you agree with our proposal to refine the existing CPs in section D.2 of the CG Code setting the scope of the (at least) annual reviews of the risk management and internal control systems?

HKIoD Response:

➤ AGREE

- See our response to Question 15

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?

HKIoD Response:

➤ AGREE

- The proposal is to upgrade the current CP F.1.1 to a mandatory disclosure requirement. Whether to have a dividend policy or not should be for the issuer board to decide. For issuers who choose not to have one, it should be reasonable for the absence of such policy to be explained. For those who do have a policy, the aim of the policy and the factors that go into dividend decisions will be explained.
- Whether or not an issuer has a dividend policy, the proposal requires the issuer to explain the dividend decisions to give investors more basis to make informed decisions. Issuers can pay dividends, but issuers can also choose to retain funds but entice investors with other measures that can enhance investment return. It will be for the issuer's board to decide according to the company's business model and strategy. By requiring enhanced disclosure surrounding dividend matters, an issuer's board will have added impetus to review its approach to value creation against expectations on shareholder returns and capital management considerations.

Other minor Rule Amendments

Requirement for issuers to set a record date

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 a vote at a general meeting or to receive entitlements?

HKIoD Response:

- AGREE
 - Currently there is no rule requirement for issuers to set a record date. The proposal is to codify existing guidance on this subject matter.

Disclosure on modified auditors' opinion

Question 19 Do you agree with our proposal to codify our recommended disclosures in respect of issuers' modified auditors' opinion into the Listing Rules?

HKIoD Response:

- AGREE
 - This is to codify a practice that has been in effect for several years.

Financial Information

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?

HKIoD Response:

- AGREE
 - Board members, especially the NEDs/INEDs, must be encouraged and be empowered to obtain additional information from management to enable them to perform their duties. Consultation Paper para 177. This should be the case not just for financial information, but other information and data pertaining to the issuer's business. It would not be helpful to directors to just dispatch stacks of data. Board members should collectively consider the type, scope, structure and format of information to be provided, so the materials received are indeed succinct and can inform.

Align nomination committee requirements with existing audit committee and remuneration committee requirements

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?

HKIoD Response:

- AGREE
 - We agree with the notion of consistency of approach across these three mandatory board committees. Consultation Paper para 180.

Implementation dates and transitional arrangements

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 (pertaining to overboarding and Long Serving INEDs)?

HKIoD Response:

- AGREE generally, but see our substantive responses to the proposals pertaining to overboarding and Long Serving INEDs.

ENDS