

By Email (consultationsupport@hkex.com.hk)

16 August 2024

Hong Kong Exchanges and Clearing Limited
8/F, Two Exchange Square
8 Connaught Place
Central, Hong Kong

Dear Sir/Madam,

[Re: Consultation Paper on Review of Corporate Governance Code and Related Listing Rules \(the "Consultation Paper"\)](#)

CFA Society Hong Kong and CFA Institute ("we") appreciate the opportunity to respond to the Consultation Paper issued by the Hong Kong Exchanges and Clearing Limited (the "Exchange"). As an organization dedicated to promoting fair and transparent financial markets and safeguarding investors' interests, we are providing comments in line with our mission and advocacy efforts.

The Need for Enhanced Board Effectiveness

We recognize the primary objective of the proposals: to promote board effectiveness, independence and diversity, as well as to enhance issuers' disclosures on risk management and internal control. We believe these enhancements are justified. On April 2, 2024, over 60 listed issuers suspended trading of shares due to their failure to publish 2023 annual results. This issue was attributed to pressures to meet performance indicators and investor expectations, which increased the risk and motivation for internal corruption and financial statements fraud (Alvarez & Marsal, 2024)¹.

In response to this issue, the Accounting and Financial Reporting Council (the "AFRC") raised concerns about the adequacy of management review and the effectiveness of board and audit committee oversight. In its report², the AFRC highlighted a lack of effective communication between audit committees and auditors, and situations where auditors may overuse disclaimer opinions as a risk minimization mechanism. These issues reveal significant problems in the communication and trust among the board of directors (the "Board") and stakeholders, as well as deficiencies in issuers' risk management and internal control, further underscoring the need for robust corporate governance enhancements. This is of significant importance to investors who are reliant on the Board and other agents to safeguard their interests.

Our Perspective

Overall, we appreciate the Exchange's effort in improving corporate governance standards in Hong Kong. We generally support the proposed enhancements in the Consultation Paper and, in some areas, suggest a

¹ Hong Kong Lawyer Journal, 2024. "The Rare Wave of Trading Suspension in the History of Hong Kong Stock Exchange - Challenges Facing Companies Amidst the Wave of Suspensions". [online] Available at: <https://www.hk-lawyer.org/content/rare-wave-trading%C2%A0-suspension-history-hong-kong-stock-exchange-challenges-facing-companies> [Accessed 11 July 2024].

² Accounting and Financial Reporting Council, 2024. "Analysis of Listed Entities Suspended from Trading Due to Delay of Preliminary Annual Results Announcement". [online] Available at: <https://www.afrc.org.hk/media/4rzpd244/report-on-suspension-of-trading.pdf> [Accessed 11 July 2024].

strengthened approach. The inclusion of a Lead INED and directorship rotation are crucial to ensuring board effectiveness. Training and diversity are essential for maintaining board competence and quality. Performance review disclosures help investors assess board quality and make informed decisions. Furthermore, the proposal for an annual review of risk management and internal control systems, along with enhanced disclosures, is vital for maintaining robust governance standards. These measures will enhance the overall corporate governance of listed issuers, addressing concerns regarding the adequacy of board oversight and maintaining investors' confidence in our financial market.

We believe the Exchange's effort to review the Corporate Governance Code and related Listing Rules is a worthwhile one. This is a great opportunity to convey aspirations and market signals on an important topic. Thank you for considering our views and perspectives. We have detailed our comments in the response section of this letter. We welcome and appreciate the opportunity to meet and provide more details as outlined in our letter. Should you have any questions or require further elaboration, please contact Mr. Matthew Chan, Managing Director of CFA Society Hong Kong, at matthew.chan@cfahk.org, or Mr. Olivier Fines, CFA, Head of Advocacy at CFA Institute, at olivier.fines@cfainstitute.org.

Sincerely,

For an on behalf of
CFA Society Hong Kong

Matthew Chan
Managing Director

For and on behalf of
CFA Institute

Olivier Fines
Head of Advocacy



CFA Society
Hong Kong

About CFA Society Hong Kong and CFA Institute

CFA Society Hong Kong (the "Society") is a non-profit organization founded in 1992. The Society shares the mission of CFA Institute (the "Institute") in raising the professional and ethical standards of financial analysts and investment practitioners through our advocacy and continuing education efforts. In addition to promoting the CFA® designation in Hong Kong, the Society aims to provide a forum for our members, the Institute, other investment practitioners and regulators for networking and the exchange of industry insights and best practices.

CFA Institute is a global, not-for-profit professional association of more than 181,000 members, as well as 160 member societies around the world. The Institute administers the Chartered Financial Analyst® (CFA) Program. Our members include investment analysts, advisers, portfolio managers, and other investment professionals. Our advocacy positions are informed by our global membership, which invests both locally and globally.

Response Section

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 support the designation of a Lead INED on the Board, a recommendation that aligns with the suggested practices highlighted in several Institute reports focused on corporate governance practices³ (the “CFA Reports”). In these reports, we have emphasized the role of the Lead INED in enhancing corporate governance practices and acting as a focal point of contact for investors – a viewpoint supported by the corporate governance principles⁴ published by the Organization for Economic Cooperation and Development (the “OECD CG Principles”).

In addition, given the fact that the issue of board independence is not limited to issuers with overlapping chair roles but is pervasive across all issuers, we suggest that the new CP apply to all issuers. Another concern lies in the effectiveness of Lead INED. To ensure the Lead INED are not appointed as a window-dressing solution, we have the following suggestions:

Defined role and functions

We suggest that the Exchange provides clear guidance on the role and functions of the Lead INED. In the CFA Reports, we emphasized several key responsibilities for the Lead INED, including:

- Overseeing the issuer’s relations with shareholders and actively engaging in direct communication between the Board and shareholders, in particular, non-controlling or minority shareholders. Leading the annual review of effectiveness of corporate communication and/or investor relations functions of the issuer.
- Advising the Board on conflicts of interest and providing guidance to ensure proper governance practices.
- Providing leadership to other independent directors and fostering their active participation in the Board’s activities.
- Presiding over Board meetings in the absence of the chair and contributing to the development of meeting agendas.
- Assist the nomination committee to evaluate the overall performance of the Board and individual directors to drive continuous improvement.
- Collaborating closely with the nomination committee to select Board candidates and oversee Board succession planning.

³ “The Corporate Governance of Listed Companies” (first published in 2005) [online] Available at: <https://www.cfainstitute.org/-/media/documents/article/position-paper/corporate-governance-of-listed-companies-3rd-edition.pdf>;

“The Independent Non-Executive Directors—A Search for True Independence” (published in 2010) [online] Available at: <https://rpc.cfainstitute.org/-/media/documents/article/position-paper/independent-non-executive-directors-a-search-for-true-independence-in-asia.pdf>; and

“The Independent Directors in Asia Pacific: Regulations and Practice in Selected Markets” (published in 2020) [online] Available at: https://rpc.cfainstitute.org/-/media/documents/article/position-paper/cfa-id_apac_web.pdf

⁴ “G20/OECD Principles of Corporate Governance” [online] Available at: <https://www.oecd-ilibrary.org/docserver/ed750b30-en.pdf?expires=1720360789&id=id&accname=quest&checksum=CCA90E43AF183C98471B8FEDB4910338>

Additionally, we suggest that the expected roles and functions of a Lead INED be classified into "should do" and "can do" categories. This classification allows for a clear delineation of core responsibilities ("should do"), such as overseeing shareholder relations and advising on conflicts of interest, while also providing flexibility ("can do") for the Lead INED to take on additional tasks based on their expertise and the specific needs of the issuer.

Empowerment of Lead INED

In order for the Lead INED to effectively discharge their responsibilities, we believe the proposal could go a step further by introducing best practices to guide issuers granting additional rights and powers to the Lead INED. We suggest such powers include, among others:

- The right to convene Board and/or shareholders' meetings for board members and/or shareholders to vote on resolutions or proposals.
- The power to oversee corporate communication and/or investor relations functions of the issuer, such that shareholders have a channel to communicate with the Lead INED. This practice is akin to the best practice wherein the internal audit function directly reports to the audit committee.
- The authority to serve as the principal liaison between the independent directors and the Chairman.

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 or 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 support the proposed mandatory professional development for directors, including First-time Directors, as it ensures that directors are equipped with the necessary knowledge and skills to effectively carry out their duties. We have the following specific comments:

Mandatory training for all existing directors (Question 2(a))

We agree with the necessity of mandatory training for directors, as it helps to ensure that the Board can cope with the increasingly dynamic business environment, emerging disruptive technologies, and tightening regulatory requirements on ESG and financial reporting. It ultimately serves the company's interests and benefits investors.

However, we are concerned that the current proposal, which does not specify a minimum number of training hours, may not adequately emphasize the importance of ongoing education for directors. We suggest that the Exchange specify minimum annual training hours even for existing directors – to be made comparable to those required in other professions within the legal and financial industries. Furthermore, we suggest that the training

be delivered and verified by recognized professional bodies or reputable educational institutions to ensure its quality and credibility.

In addition, we suggest some flexibility in exemption for directors who hold recognized professional qualifications, such as CFA, CPA and lawyer, that they can apply their continuous training hours to be counted towards the training hours required herein.

Mandatory trainings for First-time Directors (Question 2(b))

We agree with mandatory training for First-time Directors, with reservation on the details. In the CFA Reports, we suggested implementing an induction course for new directors. Such course would provide new directors with fundamental and comprehensive insights into the issuer, its operations, and its strategic direction, as well as cover the relevant legal and regulatory framework to ensure they understand their responsibilities from the outset. Given that the initial training is essential for First-time Directors, we see no reason for granting a longer period of 18 months to complete it. Therefore, we suggest that the required 24 training hours be completed within 12 months following their appointment.

Additionally, when comparing the training requirements for First-time Directors in Hong Kong with another key market, Singapore, we observed that the proposed mandatory training hours in Hong Kong appear relatively limited, and the proposed allowable period for completion is relatively extended. In Singapore, directors with no prior experience are required to complete a specific training program of 1.5 days or 30 hours provided by specified training providers, with an additional training requirement of 6.5 hours for REITs, to be completed within a year of listing for newly listed companies⁵.

Specific topics under the training requirement (Question 2(d))

We support the Exchange's proposal to specify topics that the mandatory continuous professional development for directors should cover, including board responsibilities, legal and regulatory compliance, corporate governance, ESG considerations, risk management, and industry-specific updates. We would like to emphasize the importance of including the topic of ESG as a significant development trend, coupled with the enhanced climate disclosure requirements issued by the Exchange this year⁶. ESG factors have become increasingly relevant in corporate decision-making and stakeholder expectations.

Question 3: Do you agree with the proposed consequential changes to Principle C.1 and CP C.1.1 of the CG Code? Please provide reasons for your views.

Please refer to our comments provided in response to Question 2.

⁵ <https://rulebook.sgx.com/rulebook/practice-note-23-training-directors-no-prior-experience>

⁶ https://www.hkex.com.hk/News/Regulatory-Announcements/2024/240419news?sc_lang=en

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? Please provide reasons for your views.

Annual board performance review

We support the proposal to upgrade the current RBP to a CP. However, we suggest revising the requirement for issuers to conduct regular board performance reviews annually instead of every two years, based on the practice followed in other jurisdictions such as the United Kingdom⁷, Singapore⁸, and Australia⁹, where annual board performance reviews are commonly suggested as good governance practice.

In addition, it is worth noting that the OECD CG Principles also suggest boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competences, including with respect to gender and other forms of diversity.

Lead INED to oversee board's performance review

Furthermore, as mentioned in our response to Question 1, we suggest appointing a Lead INED who would oversee the board's performance review. This arrangement ensures accountability and facilitates the identification of areas for governance enhancement. By assigning the Lead INED with this responsibility, the board performance review process becomes more robust and independent, contributing to the overall effectiveness and transparency of corporate governance.

Disclosure and areas to be covered in board performance review

We have taken note that the Exchange intends to provide additional guidance on the areas to be covered in a board performance review. The OECD CG Principles suggest Boards should regularly carry out evaluations to appraise their performance. Building upon this principle, we suggest that the evaluation should primarily focus on assessing the Board's effectiveness and identifying areas that may benefit from improvement.

To conduct a comprehensive board performance review, it is important to encompass key areas that significantly impact governance. The evaluation should cover aspects such as the governance structure, the board's role in monitoring, the dynamics and functioning of the board, and the integrity of systems and controls. By evaluating these critical areas, issuers can gain valuable insights into the Board's performance and identify specific areas where enhancements are necessary.

To address the identified areas for improvement, developing an action plan can be beneficial. This plan should outline practical steps and initiatives aimed at rectifying shortcomings and strengthening the Board's effectiveness in fulfilling its governance responsibilities. For instance, it may involve implementing director training programs to enhance competencies or improving the onboarding process to ensure new directors can contribute effectively from the outset. By emphasizing the importance of an action plan, the board performance review becomes a catalyst for positive change and continuous improvement. It enables the Board to

⁷ <https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/>

⁸ <https://rulebook.sgx.com/rulebook/practice-guidance-2-board-composition-and-guidance>

⁹ <https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf>

proactively address any identified weaknesses and propel the issuer's governance practices to higher standards.

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? Please provide reasons for your views.

We support. The composition of the board should reflect a combination of skills and experience that enables comprehensive coverage of all issues relevant to the company and its industry now and in the future. The board composition should keep pace with the dynamics and evolving skills demands of the market, as well as avoiding “group-thinking” or a resistance to doing things differently. The diversity of the board including factors like gender, age, demographic, particular experience and expertise also aligns with the OECD CG Principles.

Required skills in the board skills matrix

Specifically, we suggest that the Exchange to be prescriptive about requiring a diverse range of core competencies in the board skills matrix, such as industry knowledge, financial expertise, and ESG knowledge, at a minimum, while leaving the remaining required skills up to each individual issuer. These skills are essential for effective decision-making and governance. Industry knowledge ensures that board members possess a deep understanding of the company's sector, enabling them to provide valuable insights and make informed decisions in response to industry-specific challenges and opportunities. Financial expertise is crucial for effective financial oversight, risk management, and strategic planning. In today's business landscape, integrating ESG knowledge is vital as it allows the board to address environmental, social, and governance considerations that have a significant impact on the company's long-term sustainability and reputation. By incorporating these core skills in the board skills matrix, issuers can ensure that their boards are well-equipped to navigate complex business landscapes, make sound decisions, and drive sustainable value creation.

Furthermore, it is important to foster diversity in board skills beyond these core competencies. Diversity in skills should encompass a broad spectrum of backgrounds, experiences, and perspectives. By embracing diverse skills, boards can benefit from a wider range of insights and decision-making capabilities, leading to more robust and effective governance.

Disclosure of board skills matrix

Disclosing the board skills matrix in the CG Report allows stakeholders to assess the alignment between the board's composition and the issuer's strategic objectives. It promotes transparency and accountability, enabling investors and shareholders to evaluate the board's effectiveness in overseeing the company's performance and long-term value creation.

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? Please provide reasons for your views.

Hard cap on INED directorships: enhancing effectiveness and commitment (Question 6(a))

We support the introduction of a hard cap on the number of listed issuer directorships that INEDs may hold. As highlighted in the CFA Reports, the number of directorships held by an individual is an important factor in assessing the effectiveness of directors. Directors who have numerous competing interests and commitments may not be able to devote sufficient time and focus compared to those serving on fewer boards. Considering the increasing responsibilities and evolving challenges faced by boards, such as cybersecurity, climate change and sustainability, and the pandemic, it is essential to ensure that INEDs can effectively fulfill their obligations. Additionally, consideration could be given to having INEDs elected by independent shareholders, as this may further strengthen their legitimacy and accountability.

While the OECD CG Principles also pointed out that service on too many boards or committees can interfere with the performance of board members, specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders. Disclosure to shareholders about board and committee memberships, chair responsibilities, attendance records, and any other work undertaken on behalf of the board along with associated remuneration is a key instrument to improve the legitimacy and transparency of board and committee nominations. For details, please refer to our response to Question 7.

Open to lowering hard cap in a phased approach in the future (Question 6(a))

It is worth noting that the proposed hard cap requirement in Hong Kong is a significant step forward compared to the practices we observed in other markets – including United Kingdom, Singapore, and Australia – where no specific hard cap requirement exists. Therefore, while we advocate for a potential further reduction in a phased approach in the future to ensure that INEDs can fully dedicate themselves to their board responsibilities, we acknowledge that Hong Kong has already made commendable progress in this regard.

Three-year transition period for existing INEDs (Question 6(b))

For existing INEDs who are currently holding more than six listed directorships, we believe that the proposed three-year transition period may be longer than necessary, considering that the market has been engaged in discussions regarding the introduction of a hard cap requirement for a considerable period, and the importance of ensuring independence and commitment of INEDs as mentioned in the first paragraph of this response. Therefore, while we suggest reducing the transition period, we also recognize that Hong Kong is taking a pioneering step by imposing a hard cap requirement compared to other markets.

Immediate compliance for newly appointed INEDs (Question 6(b))

However, for newly appointed INEDs who already hold more than six listed directorships, immediate compliance with the hard cap requirement should be expected. This ensures that new INEDs entering the boardroom can immediately align with the desired governance standards, focusing on their responsibilities and making valuable contributions to the listed issuers.

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? Please provide reasons for your views.

We support the new MDR requirement for the nomination committee to annually assess and disclose its assessment of each director's time commitment and contribution to the board, taking into account their listed issuer directorships and other significant external time commitments. As part of this assessment, the details of the director's listed issuer directorships and other significant external time commitments should also be disclosed. This measure ensures transparency and accountability in corporate governance by providing shareholders and stakeholders with valuable insights into the dedication and involvement of board members. It is essential for directors to allocate sufficient time and attention to their board responsibilities, as it enhances the effectiveness of decision-making and oversight. We also support the frequency of the assessment to be annual.

Disclosure of INED's time commitment and involvement

Furthermore, we suggest expanding the disclosure in the CG Report to include the INED's time commitment and the nature of their involvement. To provide a more comprehensive assessment, the disclosure should include specific details about the INED's involvement, such as the number of board and committee meetings attended, the frequency of meetings with shareholders, and the frequency of meetings with management etc. Additionally, it should cover the time spent on these activities, as well as the time dedicated to assessing financial and operating performance, position and prospects, special projects, or other significant commitments that may impact their availability and focus. These details shed light on the INED's active participation and commitment to the issuer's governance processes, providing shareholders and stakeholders with a comprehensive understanding of the INED's engagement in the issuer's affairs and enabling them to evaluate the INED's ability to fulfil their duties effectively. Ultimately, this disclosure empowers shareholders and stakeholders to make informed assessments regarding the INED's effectiveness and potential conflicts of interest.

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 cooling-off period? (c) With the proposed three-year transition period in respect of the implementation of the hard cap? Please provide reasons for your views.

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? Please provide reasons for your views.

Hard cap on INED tenure (Question 8(a))

We support. As raised by the CFA Reports, two factors need to be considered and balanced when it comes to maximum tenure of directors. First, long tenure allows independent directors to learn the business and the industry, boosting their ability to add value. Second, long-tenured directors may become entrenched, indifferent to shareholder concerns, and deferential to management. Research on director tenure and firm

performance shows that optimum average maximum tenure of independent directors is 9 or 10 years, a period that strikes balance between effectiveness and entrenchment.

The OECD CG Principles also recognize the importance of setting a maximum tenure for directors to maintain independence. It is worth noting that there are notable variations in maximum tenure requirements across jurisdictions, as highlighted in both the OECD Corporate Governance Factbook 2023¹⁰ (the “OECD 2023 Factbook”) and the CFA Reports. These variations range from five to 15 years, with the majority falling within the eight to 10-year range (see table 1 below for details).

Singapore has established a hard cap of nine years for director tenure, and The Hong Kong Monetary Authority's guidance¹¹ for INEDs in Hong Kong questions the independence of an INED who has served on the board of that institution for more than nine years. Considering these reference points, we support the establishment of a hard cap of nine years for INED tenure.

Table 1: Board independence requirements for listed companies



Source: OECD 2023 Factbook

The implementation of a hard cap on INED tenure serves multiple purposes. It promotes independence by avoiding long-standing relationships that may compromise objectivity¹². It also encourages board renewal and fresh perspectives, facilitating the infusion of new talent and expertise. Additionally, it addresses concerns regarding board stagnation and the need for directors to stay abreast of evolving challenges and best governance practices.

Strengthening cooling-off period (Question 8(b))

As noted, there is increasing concern about the effectiveness of a long-serving independent director on the board because of his/her relationships with the other board members and with management. Allowing a former independent director to return to the board as an independent director, even after a cooling-off period, may not be sufficient to alleviate such concerns. Hence, we suggest lengthening the cooling off period to three years as a minimum for long-serving independent directors. We have considered that three years is the norm in several APAC markets, including Singapore, Australia, Malaysia, and India. The purpose of cooling-off period is two-fold: (1) to allow long-term decisions (such as strategic plans) that were approved when the

¹⁰ https://www.oecd.org/en/publications/oecd-corporate-governance-factbook-2023_6d912314-en.html

¹¹ <https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2016/20161214e1.pdf>

¹² Nili, Y. (2015) 'The 'New Insiders': Rethinking independent directors' tenure,' Social Science Research Network [Preprint]. https://autopapers.ssrn.com/sol3/papers.cfm?abstract_id=2728413.

independent director was at the helm, to roll off, allowing the returning independent director to adopt a fresh perspective; and (2) to avoid creating an environment where the presence of a captive, former insider pool disincentivizes companies from looking at a broader pool of diverse candidates. Short of an outright ban on returning independent directors, a longer cooling-off period is necessary. Having said that, the discussion of cooling-off period is only meaningful when taken in conjunction with other aspects outlined above – i.e., “hard cap” of six listed issuer directorships and nine years on tenure for INEDs.

Furthermore, the suggestion made by the Exchange that such individuals 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 is an important measure. We suggest including companies sharing a common substantial shareholder, including listed subsidiaries, of the relevant issuer in the cooling-off restrictions. This addition helps prevent potential conflicts of interest that may arise from affiliations between the relevant issuer and other companies with shared substantial shareholders. By including such companies, it ensures that the independence and impartiality of the INED are safeguarded, and any potential conflicts of interest are appropriately managed.

Three-year transition period (Question 8(c))

Building upon our previous response to Question 6 above, we believe that the proposed three-year transition period may be longer than necessary. Considering the proportionality of the requirements in relation to the company’s size and the number of impacted directors, three years should be more than sufficient for an orderly and less disruptive transition.

Disclosure of the length of tenure of each director (Question 9)

Furthermore, the disclosure of the length of tenure, and the total length of tenure where a director has been re-designated, of each director, including INEDs, in the CG Report fosters transparency, enables stakeholders to assess the composition and independence of the board more effectively, and demonstrate the company’s dedication to accountability and maintaining a diverse and independent board. In addition, we suggest the disclosure should cover all other related entities (the coverage of which was discussed in our response to Question 8(b) above), and particularly for INEDs, the total tenure should include the period when they first became an INED of that issuer and its related entities, even if this includes time before any applicable cooling-off period.

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? Please provide reasons for your views.

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)? Please provide reasons for your views.

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? Please provide reasons for your views.

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? Please provide reasons for your views.

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? Please provide reasons for your views.

Board diversity (Question 10, 12 and 14)

We support. As highlighted in the CFA Reports, diversity among board members in terms of gender, educational background, professional qualifications, and experience can enhance the quality of discussions, foster constructive debates in the boardroom, bring forth diverse perspectives, and improve the effectiveness of decision-making processes. The OECD CG Principles further suggests diversity criteria such as gender, age or other demographic characteristics, as well as on experience and expertise, for example on accounting, digitalization, sustainability, risk management or specific sectors.

Note that a box-ticking approach to compliance is not uncommon. Unqualified candidates, such as family members, may be appointed to meet representation requirements, either due to a shortage of suitable candidates or an unwillingness of the board to actively seek them out. While we support the proposed requirement, we emphasize the need for a holistic approach – rather than as a standalone reform – addressing both the formal requirement and the underlying barriers.

For instance, the reform has to be coupled with strengthened director training programs. These programs should focus on equipping women in senior positions with the key skills required to serve in the nomination committee, given the current male-dominated landscape in Hong Kong. This would help expand the pool of qualified women candidates and establish a more sustainable pipeline going forward.

Workforce diversity (Question 11 and 13)

We support. Particularly, we suggest providing a further gender breakdown of senior management roles, such as C-Suite executives, or individuals holding the titles of Directors, Managing Directors and above, as commonly used in listed companies. We have observed that some smaller companies disclose only a simple gender breakdown of their entire workforce in their annual reports, which lacks sufficient insight. Additionally, we suggest that the workforce diversity policy should encompass various factors, including but not limited to gender, age, cultural and educational background, and professional experience. Also, it is important for issuers to conduct an annual review and disclose the implementation of their workforce diversity policy in their CG Report.

A workforce diversity policy complements the CG Code and helps guide the criteria for selection. One common barrier to workforce diversity and engagement with individuals from either a minority background or with a minority view is that – the criteria for selection are not obvious and opacity allows bias to affect decisions. While we support the Exchange’s direction of travel, we are concerned about the potential problems of vague language and narratives, unless more substantive plans and policies are required.

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?

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? Please provide reasons for your views.

We support. The proposal to emphasize the board's responsibility for the issuer's risk management and internal controls, as well as the (at least) annual reviews of their effectiveness, aligns with good corporate governance practices and ensures robust risk management and internal control systems are in place. Furthermore, the enhancement of upgrading the requirement to conduct (at least) annual reviews of the effectiveness of the issuer's risk management and internal control systems to a mandatory obligation will enhance transparency and accountability, providing stakeholders with greater confidence in the issuer's risk management practices. Regarding the refinement of the existing CPs in section D.2 of the CG Code, by clarifying the scope of the (at least) annual reviews of the risk management and internal control systems, issuers will have clear guidance on the expectations and requirements, which in turn will contribute to more effective and comprehensive reviews, further enhancing the overall governance framework.

Moreover, we suggest that the Exchange conducts a review of the current scope of work outlined in MDR paragraph E(d)(i) for the audit (or risk) committee to ensure a clear allocation of duties in relation to the review of the issuer's risk management and internal controls systems between the committee and the board. Additionally, we suggest extending the scope of risk management and internal control system disclosure, as stated in MDR paragraph H, to encompass new listing applicants.

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? Please provide reasons for your views.

We support the proposal for disclosure of dividend policies and decisions, which promotes informed investment decisions, accountability, and alignment of interests between issuers and shareholders, ultimately enhancing market efficiency, investor confidence, and good governance principles.

However, it is important to acknowledge that implementing this requirement may present certain challenges and complexities. One of the difficulties in implementing this requirement is addressing the varying circumstances and expectations of different companies. For example, companies that historically had high dividend payouts may have been forced to reduce or suspend dividends during challenging periods, such as the COVID-19 pandemic, in order to preserve cash and ensure business continuity. On the other hand, emerging technology and biotech companies, which often prioritize reinvesting profits into research and development, may not have a dividend payout policy in the near term.

It is important to strike a balance between the need for transparency and the practicality of implementation. The disclosure of dividend policies should consider the specific characteristics and circumstances of each company, allowing them to articulate their approach to dividends while taking into account factors such as profitability, cash flow requirements, and growth strategies. This flexibility ensures that companies are not unduly hampered by rigid requirements that may not align with their unique business models or stage of development.

In addition to the proposed disclosure of dividend policies and decisions, we suggest extending the requirement to disclose the issuer's share buy-back policies. The disclosure of share buy-back policies will provide stakeholders with valuable information regarding the issuer's intentions in repurchasing its own shares. This disclosure will enhance transparency and enable investors to evaluate the issuer's capital management strategies and their potential impact on shareholder value. Additionally, we suggest extending the proposed disclosure of dividend policies and decisions to encompass new listing applicants.

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? Please provide reasons for your views.

Question 19: Do you agree with our proposal to codify our recommended disclosures in respect of issuers' modified auditors' opinions into the Listing Rules? Please provide reasons for your views.

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? Please provide reasons for your views.

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? Please provide reasons for your views.

We do not have further comment on Questions 18 to 21 regarding other minor rule amendments. We understand these practices are already largely followed by issuers and the Exchange, and these rule amendments would provide more explicit and definitive guidelines and collectively enhance investor protection.

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? Please provide reasons for your views.

We support, save for the immediate compliance with the hard cap requirement for newly appointed INEDs we mentioned in our response to Question 6(b) and our concern over the transition period as mentioned in our responses to Questions 6(b) and 8(c).