

**ICGN**

International Corporate Governance Network

Inspiring good governance & stewardship

Hong Kong Exchanges and Clearing Limited (HKEX)
17M Floor, Hopewell Center
183 Queen's Road East
Wanchai, Hong Kong

14 August 2024

Dear Sir or Madam,

Subject: Corporate Governance Code and Listing Rules Review

The International Corporate Governance Network (ICGN) welcomes the opportunity to respond to the Hong Kong Exchange's consultation on the Review of Corporate Governance Code and Related Listing Rules.

Led by investors responsible for assets under management of \$77 trillion, ICGN is an authority on global standards of corporate governance and investor stewardship. Headquartered in London, our membership is based in more than 40 countries. ICGN's Global Governance Principles, written from an investor perspective, are widely used by our members in their company assessments and voting decisions, and by regulators when developing corporate governance rules.¹

Please find below ICGN's responses to the consultation. We particularly welcome the Exchange's efforts to strengthen board independence and effectiveness.

1. Do you agree with our proposal to introduce a new Code Provision (CP) requiring issuers without an independent board chair to designate one independent non-executive director (INED) as a Lead INED to enhance engagement with investors and shareholders?

Yes. A Lead Independent Director provides a valuable communication channel for shareholders and can help promote effective communication among independent non-executive directors and strengthen the independence of the board. Appointing a Lead Independent Director has become common practice in many markets.

To strengthen board independence, it is important that the Nomination Committee is comprised of a majority of independent directors and chaired by an independent director, and the Chair of the Board should not sit on the Nomination Committee.

2.a. Regarding continuous professional development for directors, do you agree with our proposal to make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours?

Yes. Investors expect directors to follow the necessary trainings to carry out their duties effectively. Continuous professional development is necessary to ensure that directors have the required knowledge on emerging issues pertaining to the digital transformation, sustainability-related risks and opportunities, geopolitical developments, new market trends or legislation impacting the company, etc.

¹ ICGN [Global Governance Principles](#) (2021)

2.b. Regarding continuous professional development for directors, do you agree with our proposal to require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment?

Yes.

2.c. Regarding continuous professional development for directors, do you agree with our proposal to 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?

Yes.

2.d. Regarding continuous professional development for directors, do you agree with our proposal to specify the specific topics that must be covered under the continuous professional development requirement?

Yes. While we agree that the general topics mentioned in the consultation paper are important foundations for any new board member, we also encourage the Board and management to identify the additional specific topics that are relevant, based on the company’s strategy, and to help each director acquire the knowledge they may be lacking.

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

Yes.

4. Do you agree with our proposal to upgrade the current Recommended Best Practice (RBP) in the CG Code to a CP requiring issuers to conduct regular board performance reviews at least every two years and make disclosure as set out in CP B.1.4?

Yes. We agree with the proposal to disclose in the Corporate Governance Report the scope of the performance review conducted, the process and findings of the review, including any areas of improvement identified and measures taken or planned to address the findings. We recommend being more specific and asking that the board conducts an objective evaluation of the board chair, board as a whole, committees and individual directors on an annual basis, including an external review at least once every three years.

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

Yes. A transparent approach to director selection, aligned with a Skills Matrix clarifying objective criteria, aligned with the company’s strategy, is important. It is useful for investors to see a Skills Matrix for independent directors separate from the one for executive directors. This helps investors assess the board’s capacity to exercise effective oversight over management.

6.a. In relation to our proposal to introduce a “hard cap” of six listed issuer directorships that INEDs may hold, do you agree with the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers?

Yes. We agree with the Exchange that directors must have the time and capacity to meet all of their responsibilities, including when there are unforeseen events and in times of crisis. ICGN recommends in its Global Governance Principles that an individual director should not

hold more than three directorships of any sort, and this should be substantially less for executive directors, as well as for the board chair and committee chairs.

The number of board seats is only one aspect, of course, and directors must consider their time commitment more broadly, before accepting a new position.

6.b. In relation to our proposal to introduce a “hard cap” of six listed issuer directorships that INEDs may hold, do you agree with the proposed three-year transition period to implement the hard cap?

No response.

7. Do you agree with the proposal to introduce a new Mandatory Disclosure Requirement (MDR) in the CG Code to require the nomination committee to annually assess and disclose its assessment of each director’s time commitment and contribution to the board?

No response.

8.a. In relation to our proposal to introduce a “hard cap” of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree with the proposed hard cap to strengthen board independence?

Yes. In our view, there is no fixed date that automatically triggers lack of independence; the norm can differ in varying jurisdictions between 8-12 years after which a non-executive director may no longer be deemed independent.

8.b. In relation to our proposal to introduce a “hard cap” of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree that a person can be re-considered as an INED of the same issuer after a two-year cooling-off period?

No.

8.c. In relation to our proposal to introduce a “hard cap” of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree with the proposed three-year transition period in respect of the implementation of the hard cap?

No response.

9. Do you agree with the proposal to require all issuers to disclose the length of tenure of each director in the CG Report?

Yes.

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?

No response.

11. Do you agree with our proposal to introduce a Listing Rule to require issuers to have and disclose a diversity policy for their workforce (including senior management)?

Yes. We agree with the Exchange that a board or senior management team that comprises a genuinely diverse group of individuals, with a broad range of perspectives, is likely to make better business decisions and enjoy greater legitimacy among the company’s stakeholders.

We also agree that efforts to promote greater diversity, equity and inclusion should extend to the wider workforce.

ICGN Global Governance Principles, Principle 3, recommends that “Boards, and the workforce, should comprise a genuinely diverse group of individuals to ensure effective, equitable and inclusive decision-making in alignment with the company’s purpose and taking into consideration the interests of relevant stakeholders. This includes individuals from different genders, age, ethnicities, nationalities, social and economic origins, professional skills and personal attributes. Boards should disclose and report against the company’s policy on diversity, equity and inclusion to the extent permitted by law which should include measurable goals and period for achievement. The report should include an explanation of how the policy aligns with the company strategy and succession planning for the board and workforce.”

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?

No response.

13. Do you agree with our proposal to require as a revised MDR separate disclosure of the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management) in the CG Report?

Yes. This disclosure is relevant for the company’s investors and stakeholders.

14. Do you agree with our proposal to codify the arrangements during temporary deviations from the requirement for issuers to have directors of different genders on the board as set out in draft Main Board Listing Rule 13.92(2) in Appendix I?

No response.

15.a. Do you agree with our proposal to emphasise in Principle D.2 the board’s responsibility for the issuer’s risk management and internal controls and for the (at least) annual reviews of the effectiveness of the risk management and internal control systems?

Yes. The board should proactively oversee the assessment and disclosure of the company’s key risks, as well as assess and approve the approach to risk management and internal controls regularly. We recommend that the board also assess the effectiveness of whistleblowing mechanisms.

15.b. Do you agree with our proposal to upgrade the requirement to conduct (at least) annual reviews of the effectiveness of the issuer’s risk management and internal control systems to mandatory and require the disclosures set out in MDR paragraph H?

Yes.

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

Yes.

17. Do you agree with our proposal to introduce a new MDR requiring specific disclosure of the issuer's policy on payment of dividends and the board's dividend decisions during the reporting period?

Yes. The Exchange proposes useful additional requirements on this matter, which, in our view, should be part of the Listing Rules. The ICGN Global Governance Principles recommend that the board should disclose a clear policy on the company's approach to capital allocation as a foundation for long-term value creation. This includes a "dividend policy with the rationale behind pay-out ratios/levels and changes in circumstances that may result in reducing or not paying a dividend; approach to special dividends; use of scrip dividends (if any)".

The Exchange could envisage extending the requirement to a policy on capital allocation more broadly, which would also cover the use of share buybacks, among other topics.

18. Do you agree with our proposal to introduce a Listing Rule requirement for issuers to set a record date to determine the identity of security holders eligible to attend and vote at a general meeting or to receive entitlements?

Yes. We note that there is currently no Listing Rule requirement for issuers to set a record date. The expectation for issuers to do so for general meetings and for entitlements is set out in the Exchange's guidance materials only, which do not form part of the Listing Rules and are not binding on issuers. ICGN supports the revision of the Listing Rules to require issuers to set a record date, which will help remove obstacles to shareholder voting.

It is important that the record date is set close to the shareholder meeting date, and not too long in advance, as highlighted in the consultation document. This helps ensure that investors can recall loaned securities to vote on key issues and helps avoid situations of empty voting.

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

Yes.

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?

No response.

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?

No response.

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?

No response.

Thank you again for the opportunity to share our perspective. If you would like to follow up with questions or comments, please contact our Global Policy Director, Severine Neervoort (severine.neervoort@icgn.org).

Yours faithfully,

A handwritten signature in blue ink that reads "Jen Sisson". The signature is written in a cursive, flowing style.

Jen Sisson

Chief Executive Officer, ICGN