

Apr 2021 Legal and Regulatory Update

Top stories

HKEX consultation on corporate governance revisions

On 16 April, 2021, **HKEX published a consultation paper** on proposed enhancements to the **Corporate Governance Code and Corporate Governance Report**. Some proposals relate to further strengthening the **link** between corporate governance and **ESG**. The consultation period will **close after 18 June**. ([Press release](#); [full document](#))

HKEX intends to **implement** the proposals (*except those relating to long-serving directors*) for **financial years commencing on or after 1 January 2022**.

As regards **proposals on independent directors** (“INEDs”) **servicing more than 9 years**, there will be a longer transitional period — effective for financial years commencing on or after **1 January 2023**.

In terms of the technical approach, the proposals introduce new/upgrade “Code Provisions” (“CP”; *subject to “comply or explain”*), “Recommended Best Practices” (“RBP”; *which are voluntary*). Some Code Provisions are upgraded to Listing Rules. For enhancing disclosure, there are new “Mandatory Disclosure Requirements” (“MDR”; *disclosed under corporate governance reports*).

It is noted that **HKEX will provide additional guidance**, including on new areas like culture, and key disclosure areas.

Key proposals include:

- **Corporate culture**
 - (New CP) The **board** required to **align culture** with company’s purpose, values, strategy
 - (i) HKEX will provide further guidance
 - (ii) Common elements of a sound culture (*e.g. tone from the top; periodic review by the board; linkage to financial/non-financial incentives*)
 - (iii) Disclosure (*e.g. description of the vision, value and strategy of the company, alongside with its culture, and how all these affect the business model*)
 - (New/upgraded CPs) **Anti-corruption and whistleblowing policies** required
- **Board independence, refreshment and succession planning**
(*Key changes*) **long-serving INEDs**

- **Independent shareholders’ approval for re-election of INED(s) serving more than 9 years**
- **Additional disclosure:** why such INED still independent (*i.e. factors considered, process and the board/ nomination committee’s discussion in arriving at such determination*)
- If **all INEDs served more than 9 years**, to **appoint a new INED** at the forthcoming AGM; and disclose their respective length of tenure on a named basis

Others:

- (*New CP*) **Policy** in place, to ensure **independent views are available to the board**, and **annual review** of its effectiveness
 - (*Upgraded to Rule*) **mandatory nomination committee**, chaired by an INED and comprising a majority of INEDs
 - (*New Rule*) **disclosure of directors’ attendance at general meetings** in poll results announcements
 - (*New RBP*) generally should **not grant equity-based remuneration to INEDs**, for objectivity and independence
- **Diversity**
 - **Single gender board** not considered a diverse board
 - (*New MDR*) set and disclose mandatory (*numerical*) **targets and timelines** for achieving gender diversity at both **board and workforce** (*including senior management*) levels
 - (*New CP*) boards required to **review progress of diversity policy annually**
 - **Transitional arrangements for single gender boards:** a **three-year period** to appoint at least one director of the absent gender
 - **Communications with shareholders**
 - (*Upgraded to MDR*) disclosure on **shareholders communication policy**, and **annual review** of its effectiveness
 - Two-way communication: dissemination of information to shareholders; solicit feedback
 - HKEX will provide guidance on areas where the company may provide more discussions/information, in addition to “strict reporting requirements” (*e.g. business strategies moving forward; remuneration structure*)
 - **ESG**
 - New **introductory paragraph** added to the **Code**, elaborating on **linkage** between corporate governance and ESG

- ESG report to be published at the same time as annual reports (*i.e. within 4 months of year-end, instead of 5 months for ESG reports now*)
- **Re-arrange order of the Code for a better flow**
 - No substantive changes

What you should do/watch out for:

- Note the **consultation period**, for making responses as appropriate
- **Update the board** and relevant teams on the broad proposals, following **management’s initial assessment** of the impact (*in light of implementation timeframe*), e.g. long-serving INEDs; corporate culture, mandatory nomination committee; publication time of ESG report, other gaps in policies/processes/disclosure
- **Detailed analysis by management** for board discussions in due course (*e.g., long-serving INEDs — analysis of past shareholder voting history, after excluding votes by substantial shareholder/non-independent shareholders*)
- Note **enhanced disclosure** in corporate governance report, consider early-adoption where appropriate

Hot Trends

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For a holistic review of your governance practices

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