

## Dec 2024 Special Legal and Regulatory Update

### HKEX consultation conclusions on corporate governance revisions

On 19 Dec 2024, HKEX published its consultation conclusions on proposed enhancements to the **Corporate Governance Code** and related Listing Rules. ([Press release](#); [full document](#)).

The proposals, as modified in some areas, will be effective from **1 July 2025**. They will apply to **corporate governance reports** (CG reports)/annual reports for **financial years commencing on or after** such date. It is noted that **HKEX will provide guidance materials during first half of 2025**.

There will be **transitional periods** as regards:

- **Independent directors (INEDs) serving more than 9 years (Long-serving INEDs) (*extended transitional period to 6 years, with phased implementation*)**
  - **Phase one** (*compliance by the first AGM held on or after 1 Jul 2028*): **Majority** of INEDs must NOT be Long-serving INEDs
  - **Phase two** (*compliance by the first AGM held on/after 1 Jul 2031*): **NO** Long-serving INEDs
  - **Cooling-off period** extended to 3 years (*original proposal: 2*)
- **Hard cap on “overboarding” (3-year transitional period, as originally proposed, compliance required by first AGM held on or after 1 Jul 2028)**

The “**Lead INED**” proposal is modified to **voluntary** (“*Recommended Best Practice*”; “*RBP*”). Enhanced communications with shareholders are introduced.

For **Long-serving INEDs**, the consultation conclusions document (*Para 129*) explains that **HKEX’s ultimate objective of phasing out Long-serving INEDs remains unchanged**. The “phased approach” allows issuers more time and flexibility over 2 director rotation cycles to **conduct comprehensive succession planning** for “phasing out” in an orderly and measured manner.

**HKEX also strongly encourages issuers to plan ahead of time** to avoid significant abrupt changes to board composition that could impact board continuity and create gaps in experience and governance.

**Key revisions** are summarised below.

*(See consultation conclusions: (P.3) detailed summary of changes comparing with original proposals; (Appendix III) detailed rule amendments).*

*[Note: in terms of the technical approach, the revisions introduce new “Code Provisions” (“CP”; subject to “comply or explain”). Some Code Provisions are upgraded to Listing Rules. For enhancing disclosure, there are changes in “Mandatory Disclosure Requirements” (“MDR”; disclosure under CG reports). ]*

## What you should know

### I. BOARD EFFECTIVENESS

- **(MODIFIED; New RBP) Designation of “Lead INED”**
  - Issuers **without an independent board chair** to designate a “Lead INED”
  - Roles
    - as an intermediary for other directors and shareholders
    - be available to other directors and shareholders when normal communication channels with the chairman or management are inadequate
  - *(New MDR, new CP)* Enhanced disclosure in the CG report regarding **shareholder engagement**
    - **the board, in particular the INEDs, should be accessible to shareholders** to facilitate constructive engagement and to understand their views on matters affecting the issuer, including governance and performance against the issuer’s corporate strategy
- **(MODIFIED; new Rule/revised MDR) Mandatory director training**
  - For **all directors**; covering **specified topics**
    - roles and responsibilities of the board/committees and directors, and board effectiveness
    - issuers’ obligations and directors’ duties under HK law and Listing Rules, and key legal/regulatory developments
    - corporate governance and ESG *(including developments on sustainability or climate-related risks and opportunities relevant to the issuer/business)*
    - risk management and internal controls
    - industry-specific developments, business trends and strategies relevant to the issuer
  - **(MODIFIED) “First-time directors”**: *(minimum)* **24 training hours** within **18 months** of appointment
    - appointed as a director of an issuer listed for the first time; or
    - not served as a director of an issuer listed for a period of 3 years or more prior to their appointment
    - **modified to 12 hours**, for **directors with experience** in issuers listed on other exchanges *(other than HKEX Main Board or GEM)* within 3 years prior to their appointment

- **Enhanced disclosure** for each director: number of hours; topics/format of training; names of relevant training providers (*if external*)
- **(Upgrade to CP) Board performance review**
  - At least **every two years**
  - Issuer's **discretion re: format** (*e.g. internal or external providers*)
  - Focus on the **board's performance as a whole** (*not individual director performance*)
  - **Specific disclosure**: scope of review; process and findings including improvement; measures taken/planned to address the same
- **(New CP) Maintain and disclose board skills matrix**
  - **And enhanced disclosure**: existing skills mix; how the skills/diversity serves the issuer's purpose/values/strategy/culture; details and plans to acquire further skills
- **(New Rule/new MDR) Overboarding INED and directors' time commitment**
  - **Hard cap on overboarding** (*NOT more than 6 listed issuer directorships*)
  - **Nomination committee**: to **annually assess and disclose** each director's time commitment and contribution

## **II. INDEPENDENCE OF INEDS**

- **(MODIFIED; new Rule/revised MDR) Long-serving INEDs**
  - **Not considered as independent**
  - **(Modified) Phased implementation** as explained above
  - **(Modified)** Allowed to serve as INED again after a cooling-off period of **3 years**

## **III. (New CP/new Rule/MDR) BOARD AND WORKFORCE DIVERSITY**

- Various measures
  - **(New CP) Nomination committee**: at least 1 director of a different gender
  - **(Upgrade to MDR) Results of annual review of implementation** of board diversity policy (*including progress towards objectives*)
  - **(New Rule) Set and disclose a workforce diversity policy** (*including senior management*)
  - **(MDR) Separate disclosure** of gender ratio of senior management and workforce

## **IV. (Upgrade to MDR) RISK MANAGEMENT AND INTERNAL CONTROLS**

- **Enhanced disclosure on annual reviews** of such systems
  - Including supporting information on board's conclusion of effectiveness of the systems (*e.g. confirmation received from management, etc.*), and details of review findings

## V. (New MDR) DIVIDENDS

- Including enhanced disclosure of **dividend policy** and **dividend decisions**
  - E.g. **dividend decisions**
    - reasons for **material variation** in dividend rate compared with previous period
    - **if no dividend declared**: reasons for decision and measures to enhance investors' return

### *What you should do/watch out for:*

- **The board** and relevant teams be updated on the revisions, following **management's initial assessment** of the impact (*in light of implementation timeframe*), e.g. overboarding, Long-serving INEDs, other gaps in policies/processes/disclosure
- **Detailed analysis by management** for board discussions in due course
- Note **enhanced disclosure** in CG reports, consider early-adoption where appropriate

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