

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** NON-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

Prepared by Practising Governance Limited (Wendy Yung)

Jan 2025