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HKEX News Update: Consultation Conclusions on Corporate Governance Code Enhancements

On 19 December 2024, the Stock Exchange published Consultation Conclusions to its Consultation Paper regarding proposed amendments to the Corporate Governance Code ("CG Code") and related Listing Rules.

(A) Major Rule Amendments

The key changes adopted include:

Board Effectiveness

(a) **Designation of Lead Independent Non-Executive Director ("Lead INED")**

- Recommend issuers without an independent board chair to designate one independent non-executive director ("INED") as a Lead INED *(New RBP C.1.8)* and disclose in corporate governance report ("CG report") *(Amended MDR paragraph B(a))*; and
- Enhance disclosure of the board's engagement with shareholders in the CG report *(New MDR paragraph L(d) & CP F.1.1)*.

(b) **Mandatory Director Training**

- Require all directors to receive mandatory continuous professional development on specified topics each year *(New MB Rules 3.09F & 3.09G / GEM Rules 5.02F & 5.02G)*;
- Require "first-time directors"[1] (who are appointed as a director of an issuer listed on the Main Board or GEM for the first time, or have not served as a director of an issuer listed on the Main Board or GEM within 3 years prior to their appointment) to receive a minimum training hours of 24 hours within 18 months of the date of their appointment *(New MB Rule 3.09H / GEM Rule 5.02H)*;
- Require "first-time directors"[1] who have served as a director of an issuer listed on other exchanges within three years prior to their appointment to receive a minimum training hours of 12 hours within 18 months of the date of their appointment *(New MB Rule 3.09H / GEM Rule 5.02H)*; and
- Enhance disclosure in CG report *(Amended MDR paragraph B(i))*.

(c) **Board Performance Review**

- Require a board performance review focusing on overall performance of the board at least every two years, with specific disclosure in the CG report *(Upgraded to New CP B.1.4)*; and
- Require nomination committee to support board performance evaluation *(Amended CP B.3.1)*.

(d) **Board Skills Matrix**

- Require issuers to maintain and disclose a board skills matrix, with enhanced disclosure, in CG report *(New CP B.1.5)*; and
- Require nomination committee to assist the board in maintaining a board skills matrix *(Amended CP B.3.1)*.

(e) **Overboarding INED and Directors' Time Commitment**

- Mandate a "hard cap" of six concurrent Hong Kong-listed issuer directorships for INEDs *(New MB Rule 3.12A / GEM Rule 5.07A)*:
  - with a three-year transition period from 1 July 2025 (i.e. compliance by the first annual general meeting ("AGM") held on or after 1 July 2028) for issuers with overboarding INED; and
  - compliance on or after 1 July 2025 for IPO applicants;
- continue to apply the requirement in respect of election of INEDs who will be holding their seventh (or more) Hong Kong-listed issuer directorship during the transition period (for any relevant general meetings held on or before 30 June 2028) *(CP B.3.4(b))*; and
- Require Nomination Committee to annually assess and disclose its assessment of each director's time commitment and contribution to the board in CG report *(Amended MDR paragraph E(d)(iii))*.

<u>Independence of INEDs</u>

(f) **Independence of INEDs after nine years**

- Mandate a "hard cap" of nine years on the tenure of INEDs *(New MB Rule 3.13A / GEM Rule 5.09A)*:
  - <u>Phase One</u>: with a three-year transition period from 1 July 2025 (i.e. compliance by the first AGM held on or after 1 July 2028) – an issuer must not have INEDs who have served for nine years or more on the board ("Long-Serving INEDs") representing a majority of the INEDs of the board; and
  - <u>Phase Two</u>: with a six-year transition period from 1 July 2025 (i.e. compliance by the first AGM held on or after 1 July 2031) – an issuer must not have any Long-Serving INED on the board;
- Impose cooling-off period of three years for former INEDs. If an individual ceases to serve as an INED for the relevant issuer for less than three years (prior to serving as INED for a period of nine years) and is then re-appointed by the same issuer as an INED, such period(s) will also be counted towards the calculation of the tenure *(New MB Rule 3.13A / GEM Rule 5.09A)*; and
- Continue to apply current requirements in respect of (i) tenure disclosure of INEDs in the shareholder circular and appointment of new INEDs when all INEDs of the issuer are Long-Serving INEDs (for any relevant general meetings held on or before 30 June 2028, i.e. expiry of Phase One) *(CP B.2.4)*; and (ii) the re-election of Long-Serving INEDs (for any relevant AGMs held on or before 30 June 2031, i.e. expiry of Phase Two) *(CP B.2.3) during the transition period.*

(g) **Disclosure of Length of Tenure of each Director**

- Disclose length of tenure and current period of appointment of all directors in CG report *(Amended MDR paragraph B(a))*.

<u>Board and Workforce Diversity</u>

(h) **Director of Different Gender on Nomination Committee**

- Appoint at least one director of a different gender to the nomination committee *(New CP B.3.5).*

(i) **Workforce Diversity Policy**

- Establish and disclose a workforce (including senior management) diversity policy *(Amended MB Rule 13.92(1) / GEM Rule 17.104(1) and MDR paragraph J(b))*.

(j) **Annual Review of Board Diversity Policy**

- Require disclosure of the result of the annual review of the implementation of the board diversity policy (including progress towards the issuer's objectives and how the issuer has arrived at its conclusion) in CG report *(Upgraded to Amended MDR paragraph J(a))*.

(k) **Gender Ratio Disclosure**

- Require separate disclosure of gender ratios of senior management and workforce (excluding senior management) in CG report *(Amended MDR paragraph J(c))*.

(l) **Arrangement during Temporary Deviations from Gender Diversity in Board**

- Codify the arrangements during temporary deviations from the requirement to have directors of different genders on the board and require re-compliance with the requirement as soon as possible and in any case within three months of the breach *(Amended MB Rule 13.92(2) / GEM Rule 17.104(2))*.

Risk Management and Internal Control (RMIC)

(m) **Annual Review of RMIC Systems**

- Enhance disclosure in respect of annual review of the effectiveness of the RMIC systems of the issuers and their subsidiaries in CG report, which includes supporting information on board's conclusions as to the effectiveness, and details of the review findings *(Upgraded to Amended MDR paragraph H)*.

(n) **Scope of RMIC's Annual Review**

- Emphasise the responsibility of the board to maintain and establish effective RMIC systems *(Amended Principle D.2 of CG Code)*; and
- Refine the annual review should cover all material controls of the issuers and their subsidiaries and adequacy of various types of resources for designing, implementing and monitoring the RMIC systems *(Amended CP D.2.1)*.

Dividends

(o) **Dividend Policy and Board Dividend Decision**

- Require specific disclosure of dividend policy (or explain the reason(s) for not having one) and the board's dividend decisions in CG report *(New MDR paragraph M)*.

Amendments relating to (i) mandatory director training; (ii) cap on overboarding; and (iii) cap on INED's tenure do not apply to secondary listed overseas issuers *(Amended MB Rule 19C.11)*.

The related amended CG Code and related Listing Rules will come into effect on 1 July 2025, and apply to CG reports and annual reports for financial years commencing on or after 1 July 2025, with transitional arrangements as mentioned above.

The Stock Exchange will publish updated guidance in the first half of 2025 to assist issuers' compliance with the new requirements.

(B) Other Minor Rule Amendments

The other minor changes adopted include:

(a) **Record Date**

- Codify the Stock Exchange's existing guidance to set a record date to determine the identify of security holders' eligibility to attend and vote at a general meeting or to receive entitlements into the Listing Rules *(Amended MB Rule 13.66(1) / GEM Rule 17.78(1))*.

(b) **Disclosure on modified auditors' opinion**

- Codify the Stock Exchange's recommended disclosure in respect of issuers' modified auditors' opinions in annual report into the Listing Rules *(Amended Paragraph 3.1 of Appendix D2 to the MB Rules / Note to GEM Rule 18.47)*.

(c) **Monthly Updates to the Board**

- Clarify that directors are entitled to and should request monthly updates of the issuers' financial and operating performance, position and prospects if management does not provide the same *(Amended CP D.1.2)*.

(d) **Alignment of requirements of Nomination Committee, Audit Committee and Remuneration Committee**

- align the 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, and require re-compliances with the requirements as soon as practicable and in any case within three months of the breach *(New or amended MB Rules 3.23, 3.27, 3.27B & 3.27C [2] / GEM Rules 5.33, 5.36, 5.36B & 5.36C [2] / MB Rule 8A.28A [3])*.

The requirements of nomination committee, audit committee and renumeration committee do not apply to secondary listed overseas issuers *(Amended MB Rule 19C.11)*.

Other minor amendments to the CG Code and Listing Rules will also come into effect on 1 July 2025.

To view the full details of HKEX's news, please click HERE.

Notes:
1. *The training requirements will apply to "first-time directors" appointed on or after 1 July 2025.*
2. *For all issuers except for issuers with a weighted voting rights structure.*
3. *For issuers with a weighted voting rights structure.*

Definitions:
1. *CP: Code Provision under the CG Code.*
2. *GEM Rule(s): GEM Listing Rules.*
3. *MB Rule(s): Main Board Listing Rules.*
4. *MDR: Mandatory Disclosure Requirement under the CG Code.*
5. *RBP: Recommended Best Practice under the CG Code.*