



HKEX Corporate Governance Code and Listing Rule Changes Effective 1 Jan 2022

On 10 December 2021, the Stock Exchange of Hong Kong Limited (the **HKEX**) published conclusions to its consultation on enhancing listed companies' corporate governance practices and reporting¹. The HKEX received 214 submissions which were generally supportive of strengthening board independence and promoting better gender diversity on company boards. However, respondents had diverse views on proposals regarding re-election of independent non-executive directors (**INEDs**) serving more than nine years and the targets and timelines for boardroom gender diversity.

For a summary of the original consultation paper proposals, please see [Charltons' April 2021 newsletter](#)².

Corporate Governance Code and related Listing Rule amendments took effect on 1 January 2022, although a requirement to appoint a new INED if issuers' current INEDs have all served nine years takes effect on 1 January 2023. The key changes to the HKEX Listing Rules and Corporate Governance Code are summarised below.

The HKEX has also published a new [Corporate Governance Guide for Boards and Directors](#) to assist issuers in complying with the new requirements.

HKEX Corporate Governance Code revised structure

The HKEX has renamed Appendix 14 to the Main Board Listing Rules and Appendix 15 to the GEM Rules as the “Corporate Governance Code” and rearranged it into Part 1 – mandatory disclosure requirements and Part 2 – principles of good corporate governance (**Principles**), code provisions (**CPs**) and recommended best practices (**RBP**s) to improve readability.

The mandatory disclosure requirements under Part 1 of the Corporate Governance Code are required to be disclosed in an issuer’s corporate governance report.

The Principles under Part 2 of the Corporate Governance Code are implemented on a “comply and explain” basis. Issuers must state whether they have complied with the code provisions (**CPs**) and explain any diversion from them in their annual reports (and summary financial reports, if any) and interim reports (and summary interim reports, if any).

Culture and whistleblowing policy

Listed company boards are required to align the issuer’s culture with its purpose, values and strategy, and all directors are required to act with integrity, lead by example and promote the desired culture under new CP A.1.1.

Listed issuers are also required to establish a whistleblowing policy under new CP D.2.6 which was previously a RBP only. New CP D.2.7 requires issuers to establish policy(ies) and system(s) that promote and support anti-corruption laws and regulations. Information relating to issuers’ anti-corruption and whistleblowing policies is already required to be disclosed on a comply or explain basis in environmental, social and governance reports (“**ESG Reports**”) under Appendices 27 and 20 to the Main Board and GEM Listing Rules, respectively.

Board independence

New CP B.1.4 requires HKEX listed issuers to establish mechanism(s) to ensure independent views and input are available to the board and disclose them in their Corporate Governance Reports. Listed company boards should also conduct an annual review of the implementation and effectiveness of these mechanisms.

Long serving INEDs

Where all the INEDs on an issuer’s board have served more than nine years (“**Long Serving INEDs**”), new CP B.2.4 requires that:

(i) a new INED should be appointed at the issuer's next annual general meeting ("AGM") (this requirement will take effect for financial years commencing on or after **1 January 2023**); and

(ii) the shareholders' circular and/or explanatory statement accompanying the notice of the AGM should disclose the length of tenure of each existing INED on a named basis.

The HKEX did not adopt its proposal to require the re-election of Long Serving INEDs to be approved by issuers' independent shareholders (i.e. shareholders other than controlling shareholders and their associates). Their re-election remains subject to shareholders' approval under C.P B.2.3. However, revisions to C.P B.2.3 require that the papers to shareholders sent with the resolution for re-election of a Long Serving INED should include the factors considered, the process and discussion of the board or the nomination committee in reaching the determination that the board (or nomination committee) believes the director to still be independent and worthy of re-election.

Equity-based remuneration for INEDs

The HKEX has introduced a new RBP E.1.9 that issuers should generally not grant equity-based remuneration with performance-related elements to INEDs.

Removal of specific term of appointment for NEDs

The CP previously requiring NEDs to be appointed for a specific term has been removed. The HKEX considers that its purpose, to allow shareholders to vote out a disapproved director, is already achieved by CP B.2.2 requiring directors to retire by rotation once every three years.

Board diversity - bar on single gender boards

Revised Main Board Listing Rule 13.92 (GEM Listing Rule 17.104) states that while board diversity can be achieved through a number of factors which include (without limitation) gender, age, professional experience and cultural and educational background, the HKEX will not consider a single gender board to have achieved diversity. Existing listed issuers with single gender boards have until 31 December 2024 to appoint at least one director of a different gender.

Gender diversity for HKEX IPO applicants

Companies applying to list on the HKEX on or after 1 July 2022 will need to identify at least one director of a different gender whose appointment will be effective on listing.

The Declaration and Undertaking with regard to Directors (Forms B and H for Main Board listing applicants and Forms A and B for GEM listing applicants) has been revised to require directors to specify their gender. Issuers with single gender boards who committed in their listing documents to implement gender diversity are expected to appoint a director of a different gender.

HKEX Corporate Governance Code disclosure of gender diversity targets and timelines

Under new paragraph J of the mandatory disclosure requirements, issuers must disclose in their Corporate Governance Reports:

(i) how and when gender diversity will be realised on their board of directors;

(ii) the numerical targets and timelines for attaining gender diversity on their board;

(iii) the measures adopted to develop a pipeline of potential successors to the board to achieve gender diversity; and

(iv) the gender ratio in the workforce (including senior management), any plans or measureable objectives for achieving gender diversity and any mitigating factors or circumstances which make achieving gender diversity across the workforce more challenging or less relevant. Senior management has the same meaning as in Appendix 16 to the Main Board Listing Rules (GEM Listing Rule 18.39) and may include directors of subsidiaries, supervisors of subsidiaries of PRC-incorporated issuers, heads of divisions, departments or other operating units within the group, as the issuer's board considers appropriate.³

Listed issuers' annual review of board diversity

New CP B.1.3 requires that the implementation and effectiveness of the issuer's policy on board diversity should be reviewed annually by the board.

Mandatory Nomination Committee

The requirement for HKEX listed issuers to have a nomination committee chaired by an INED or the chairman of the board and comprising a majority of INEDs has been upgraded from a Code Provision to a Listing Rule - new Main Board Listing Rule 3.27A and GEM Listing Rule 5.36A.

The HKEX did not adopt the proposal that only an INED should be allowed to chair

the nomination committee and retained the flexibility for nomination committees to be chaired by the chairman of the board.

Communications with shareholders

New paragraph L of the Mandatory Disclosure Requirements has upgraded to a mandatory disclosure the requirement for issuers to disclose in their Corporate Governance Reports their shareholders' communication policy (or its summary) and a statement that they have reviewed its implementation and effectiveness during the year (including how they arrived at the conclusion).

Disclosure of directors' attendance at general meetings

New Main Board Listing Rule 13.39(5A) (GEM Listing Rule 17.47(5A)) requires listed issuers to disclose directors' attendance at a general meeting in the poll results announcement.

ESG Report publication

Revised Main Board Listing Rule 13.91 (GEM Listing Rule 17.103(5)(d)) requires listed issuers to publish ESG Reports at the same time as publication of their annual reports. The requirement takes effect for financial years commencing on or after 1 January 2022.

[1] [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/April-2021-Review-of-CG-Code-and-LR/Conclusions-\(Dec-2021\)/cp202104cc.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/April-2021-Review-of-CG-Code-and-LR/Conclusions-(Dec-2021)/cp202104cc.pdf?la=en)

[2] <https://www.charltonslaw.com/hkex-proposes-to-revise-corporate-governance-code-and-related-listing-rules/>

[3] Paragraphs 12.1 and 12.2 to Appendix 16 of the Main Board Listing Rules (GEM Listing Rule 18.39).

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