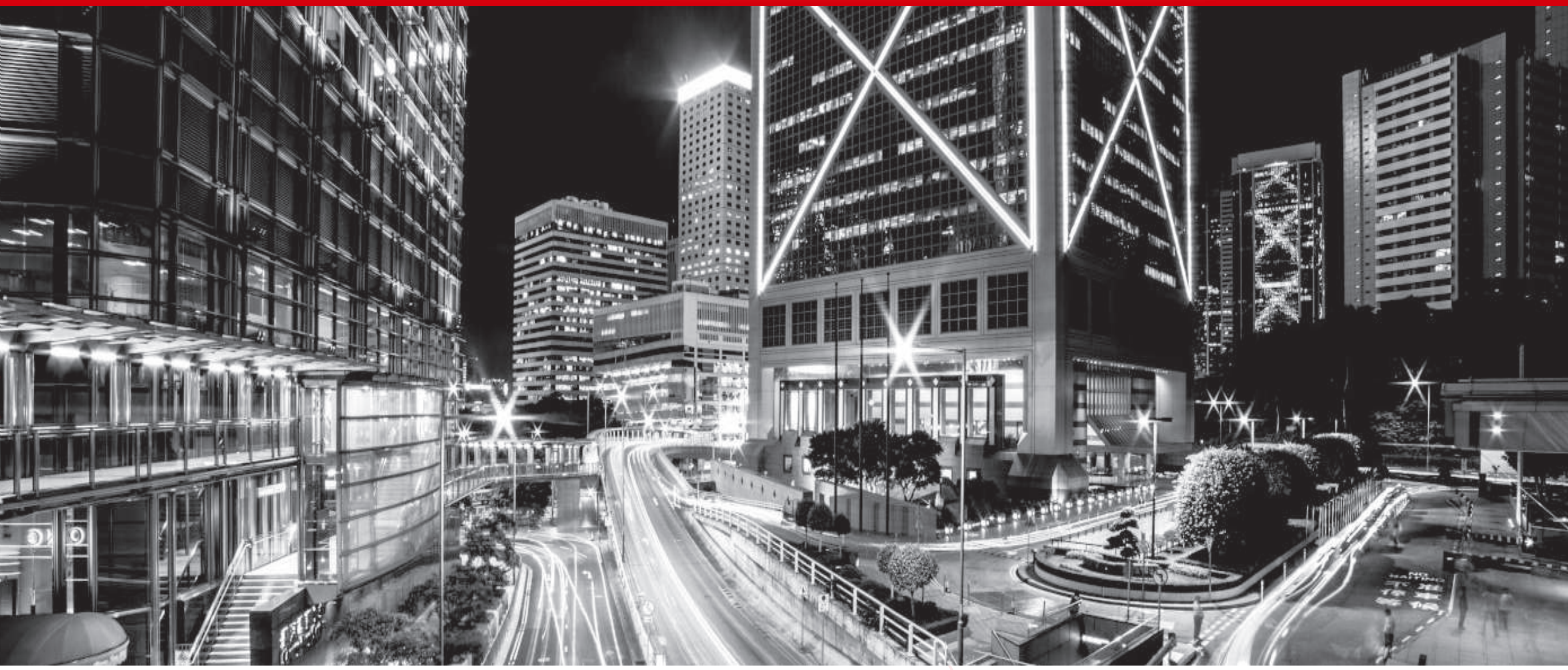

Overview of HKEX Corporate Governance Consultation Conclusions to be implemented on 1 July 2025

On 19 December 2024, The Stock Exchange of Hong Kong Limited (the **HKEX**) published the Consultation Conclusions on the Review of the Corporate Governance Code and related Listing Rules (the **HKEX Corporate Governance Consultation Conclusions**). For a summary of the Corporate Governance Code and HKEX Listing Rule amendments to be implemented, please see Charltons' December 2024 newsletter. This newsletter contains a detailed overview of the responses the HKEX received to the proposals under the Consultation Paper on the Review of the Corporate Governance Code and related Listing Rules (**HKEX Corporate Governance Proposals**) and the Corporate Governance Code and HKEX Listing Rule changes that will be adopted by the HKEX. For a summary of the HKEX Corporate Governance Proposals, please see Charltons' July 2024 newsletter.

Having reviewed the 261 submissions received during the consultation period, the HKEX has decided to adopt most of the HKEX Corporate Governance Proposals with drafting amendments to address the concerns of stakeholders. The HKEX has also changed the implementation date of the amendments to 1 July 2025. The new requirements under the revised Corporate Governance Code and related HKEX Listing Rules will apply to corporate governance reports and annual reports for financial years starting on or after 1 July 2025. Under the transitional arrangements for the rule prohibiting "overboarding" independent non-executive directors (**INEDs**), companies listed on the HKEX on or before 1 July 2025 will have to comply with the rule by the first annual general meeting held on or after 1 July 2028. Companies that apply to list on the HKEX on or after 1 July 2025 will have to comply with the rule from the date of their listing application. For the nine-year cap on tenures of INEDs, the HKEX will adopt a two-phased implementation approach over a six-year transition period. The HKEX will also publish updated guidance on the HKEX's Corporate Governance Practice Portal in the first half of 2025 for HKEX-listed companies and new listing applicants in relation to compliance with the new corporate governance requirements.

Improving Board Effectiveness for HKEX-listed Companies

HKEX-listed companies' designation of Lead INED

New Recommended Best Practice C.1.8 will be introduced to encourage HKEX-listed companies with a board chair who is not an INED to appoint a Lead INED. The Lead INED's role will be to serve as an intermediary for the other directors and shareholders and to act as an alternative communication channel when normal communication channels with the board chair or management are inadequate. As set out in the HKEX Corporate Governance Consultation Conclusions, some respondents questioned whether the Lead INED designation is necessary given that many HKEX-listed companies already have shareholder communication measures in place, and a Lead INED may be less beneficial if the HKEX-listed company has a concentrated shareholding structure. To address these concerns, the HKEX will introduce the designation of a Lead INED when the board chair is not an INED as a new Recommended Best Practice rather than as a Code Provision, which was the original proposal in the HKEX Corporate Governance Proposals. The HKEX will also amend the original proposal to clarify that the Recommended Best Practice to appoint a Lead INED does not apply when the board chair is an INED.

The HKEX encourages HKEX-listed companies with a board chair who is not an INED to designate a Lead INED and the HKEX views this position as beneficial to shareholder engagement in the long run. The HKEX will also publish further guidance on the expected roles of Lead INEDs. Investors are also encouraged to actively voice their expectations on the responsibilities of Lead INEDs to HKEX-listed companies. According to the HKEX Corporate Governance Consultation Conclusions, responses from certain investors also stated that they expect Lead INEDs to provide shareholders with insight on the strategies, governance and capital management of the relevant HKEX-listed company rather than provide information on the results, operational matters or commercially sensitive information of the HKEX-listed company. The HKEX Corporate Governance Consultation Conclusions also emphasised that all directors, including Lead INEDs, will have the same fiduciary duties and the same level of liability, even though Lead INEDs will be tasked with additional responsibilities.

The HKEX also clarified that an announcement under HKEX Listing Rule 13.51(2) is not required for the designation of a Lead INED. However, when there is a change in the designation of a Lead INED, HKEX-listed companies should publish an updated list of directors stating their roles and functions on their own website and the HKEX's website. The amended Mandatory Disclosure Requirement B(a) will also require HKEX-listed companies that appoint a Lead INED to disclose this in their corporate governance reports.

Disclosure requirements regarding HKEX-listed companies' shareholder engagement

The HKEX Corporate Governance Consultation Conclusions have also added new Mandatory Disclosure Requirement L(d) and Code Provision F.1.1, which will require HKEX-listed companies to disclose information regarding the board's engagement with shareholders in the corporate governance report. In particular, HKEX-listed companies will have to disclose:

(i) the nature and number or frequency of these engagements;

(ii) the group(s) of shareholders involved;

(iii) the representatives of the HKEX-listed company involved in the engagements; and

(iv) the HKEX-listed company's approach to follow up on the outcomes of these engagements.

The HKEX is of the view that these disclosures will facilitate constructive communication between shareholders and the boards of HKEX-listed companies on issues relating to corporate governance and performance.

Mandatory HKEX-listed company director training

According to the HKEX Corporate Governance Consultation Conclusions, the requirements in relation to mandatory director training are aimed at improving the standards of directors and enhancing board effectiveness. New HKEX Main Board Rule 3.09F and GEM Rule 5.02F[1] will require all directors to receive mandatory continuous professional development that covers at least the topics specified under HKEX Main Board Rule 3.09G or GEM Rule 5.02G, which are:

(i) the roles, functions and responsibilities of the board, its committees and its directors, and board effectiveness;

(ii) the HKEX-listed company's obligations and directors' duties under Hong Kong law and the HKEX Listing Rules, and key legal and regulatory developments (including HKEX Listing Rule updates) relevant to the discharge of these obligations and duties;

(iii) corporate governance and environmental, social and governance (**ESG**) matters (including developments on sustainability or climate-related risks and opportunities relevant to the HKEX-listed company and its

1 Principle C.1 and relevant Code Provisions will also be amended to emphasise the requirements of continuous professional development

business);

(iv) risk management and internal controls; and

(v) updates on industry-specific developments, business trends and strategies relevant to the HKEX-listed company.

The HKEX also encourages directors of HKEX-listed companies to engage in additional training on areas other than the specified topics that may be relevant to the business of the relevant HKEX-listed company or to the directors' particular roles (e.g., as members of particular board committees).

The HKEX confirmed that secondary listed overseas listed companies are not subject to the mandatory director training requirements pursuant to HKEX Main Board Rule 19C.11.

Requirements for HKEX-listed company "First-time directors"

The HKEX will adopt the proposed definition of "First-time directors" under HKEX Main Board Rule 3.09H and GEM Rule 5.02H, which will include directors who have never been appointed as a director of a company listed on the HKEX and directors who have not served as a director of a company listed on the HKEX in the three preceding years. Under the mandatory director training requirements set out in the HKEX Corporate Governance Consultation Conclusions, these "First-time directors" will need to complete at least 24 hours of training within the first 18 months of each director's appointment on the specified topics referred to above.

The HKEX acknowledged that some First-time directors may have prior experience serving on the boards of companies listed on overseas stock exchanges. To recognise their existing expertise while ensuring that these directors have sufficient knowledge of Hong Kong's regulatory requirements and to attract these experienced directors to serve on the boards of HKEX-listed companies, the HKEX has amended its original proposals and will reduce the minimum training hours from 24 to 12 within the first 18 months of appointment for "First-time directors" who have acted as a director of a company listed on an overseas exchange within the three preceding years.

The HKEX has also removed the "reset mechanism" and amended the original proposal to state that if a "First-time director" resigns before completing the minimum training hours and is subsequently re-appointed as a director of an HKEX-listed company within three years of the conclusion of their first appointment, the number of training hours completed will still be counted towards fulfilling the minimum training requirement.

The HKEX Corporate Governance Consultation Conclusions clarified that where directors are also required to fulfil training requirements of other professional organisations such as continuous professional development (**CPD**) training requirements for solicitors or accountants, this training can be counted towards the mandatory training requirement if the relevant training is on one or more of the topics specified in the HKEX Listing Rules. Training received in the capacity as a director of other HKEX-listed companies or overseas-listed companies can also be counted towards the mandatory training requirement as long as the training covers one or more of the specified topics, is not company-specific and covers Hong Kong-specific requirements.

Mandatory disclosure of HKEX-listed company director training

Although the HKEX will not mandate the format of director training to provide flexibility to HKEX-listed companies to elect the mode of training that is best suited to each HKEX-listed company and its directors, the HKEX will implement a new Mandatory Disclosure Requirement B(i), which will set out the details that must be disclosed in corporate governance reports in relation to director training. Under this new Mandatory Disclosure Requirement, HKEX-listed companies will be required to confirm that all directors have fulfilled the continuous professional development requirements. Additionally, with respect to each director, HKEX-listed companies will have to disclose the following:

(i) the total number of hours of continuous professional development completed;

(ii) the format or mode of continuous professional development taken, including whether an external or internal provider was used or whether the professional development was the result of self-study;

(iii) for each mode of continuous professional development completed by each director, the number of hours completed, the training topics covered and a description of the relevant training provider(s) (e.g., the name(s) and/or type(s)), where applicable; and

(iv) for “First-time director(s)”, a confirmation statement that the relevant director has completed the minimum training requirement under HKEX Main Board Rule 3.09H or GEM Rule 5.02H.

The HKEX acknowledged that internal training may be appropriate for training on topics related to specific HKEX-listed companies. However, the HKEX suggests that external service providers should be engaged to provide training on the regulatory and legal responsibilities of directors and boards.

HKEX-listed company board performance review

The HKEX has adopted the proposal to require HKEX-listed companies to conduct a board performance review at least every two years and to make relevant disclosures in their corporate governance reports. The requirement will be set out in new Code Provision B.1.4 and, according to the HKEX Corporate Governance Consultation Conclusions, this requirement is aimed at assisting HKEX-listed companies in assessing whether the performance of the board and the board’s skills and qualifications as a whole align with the business and strategic goals of the HKEX-listed company and providing transparency to shareholders[2]. The HKEX clarified in the HKEX Corporate Governance Consultation Conclusions that the review should be of the board’s performance as a whole, rather than of individual directors. Additionally, new Code Provision B.3.1(e) will impose on the nomination committee a duty to support the HKEX-listed company’s regular evaluation of the board’s performance.

The HKEX Corporate Governance Consultation Conclusions state that HKEX-listed companies are free to choose whether they conduct board performance reviews internally or externally and to structure reviews in a way that best suits the specific circumstances of the HKEX-listed company. In the corporate governance report, HKEX-listed companies will need to confirm whether a board performance review was conducted during the reporting period and if not, when the next board performance review will be conducted. Where a board performance review was conducted during the reporting period, HKEX-listed companies will also need to disclose the following:

(i) whether the review was conducted internally or by an external services provider;

(ii) how the review was conducted, including its scope and those involved in conducting the review;

(iii) if an external review was conducted and where applicable, the relationship between the external provider and the HKEX-listed company and/or its directors;

(iv) the findings of the review, including significant areas of improvement identified and the measures taken or planned as a result of the review.

In addition to the above requirements, HKEX-listed companies should observe the guidance that will be published by the HKEX on the expected scope of the review and the level of detail required in relevant disclosures.

Disclosure of HKEX-listed company board skills matrix

The HKEX will require HKEX-listed companies to maintain and disclose a board skills matrix as the HKEX is of the view that a well-maintained board skills matrix will better present and evaluate the experiences, skills, qualifications and expertise of the board collectively and measure them against the long-term strategy and goals of the relevant HKEX-listed company. The HKEX emphasised that the board skills matrix should not be a box-ticking exercise. New Code Provision B.1.5 will require the board skills matrix to disclose at least the following information:

(i) details of the mix of skills the board currently has;

(ii) an explanation of how the disclosed mix of skills, experience and diversity of the directors serve the purposes, values, strategies and desired cultures of the HKEX-listed company; and

(iii) the further skills the board is looking to acquire, its plans to acquire these skills and how plans made in the previous year(s) have been achieved or progressed.

Under amended Code Provision B.3.1, the nomination committee will have a duty to assist the board in maintaining a board skills matrix. The HKEX will also issue additional guidance as to the suggested format and scope of the

2 The original Code Provision B.1.5 on conducting a regular evaluation of the board’s performance will be removed

skills matrix and the level of detail required in relevant disclosures.

New cap on concurrent directorships for HKEX-listed company INEDs

The HKEX will adopt new HKEX Main Board Listing Rule 3.12A and GEM Listing Rule 5.07A to impose a hard cap of six concurrent HKEX-listed company directorships on INEDs to ensure that INEDs can devote sufficient time to each of the directorships held. Directorship positions will include both executive and non-executive director positions. The HKEX reiterated that directors should evaluate their existing workload before taking up additional positions in other HKEX-listed companies and evaluate their time commitments regularly.

As set out in the HKEX Corporate Governance Consultation Conclusions, the HKEX will also amend the implementation timeline of the above hard cap to allow for better preparation and succession planning. Companies that are already listed on the HKEX on 1 July 2025 will need to comply with this rule from the first annual general meeting held on or after 1 July 2028. The current requirements under Code Provision B.3.4(b) that apply to shareholders' resolutions approving the appointment of an INED who will be holding their seventh or more HKEX-listed company directorship (i.e., the requirement to explain in the shareholder circular the reason why the board believes that the relevant INED would still be able to devote sufficient time to the board) will continue to apply during the transition period up to 30 June 2028.

New listing applicants submitting their listing applications on or after 1 July 2025 will need to comply with the cap on concurrent directorships before making the submission.

The HKEX confirmed that secondary listed overseas listed companies are not subject to this cap on concurrent directorships for INEDs pursuant to HKEX Main Board Rule 19C.11.

Disclosure requirements on assessment of the time commitment of HKEX-listed company directors

The HKEX will also amend Mandatory Disclosure Requirement E(d)(iii) to require the nomination committee to annually assess each director's time commitment, board contribution and ability to discharge their responsibilities effectively, and to disclose the results of that assessment in the corporate governance report as part of its summary of work done. The assessment should consider circumstances such as the nature of the director's involvement on the board, their professional qualifications and work experience, their other HKEX-listed company directorships and other significant external time commitments. The same set of review criteria should be applied to all directors including those on the nomination committee. "Significant external time commitments" under this requirement will broadly include directorships of companies listed on other overseas exchanges, full-time occupations, major consultancy work, major public service commitments, as well as directorships of and involvement in statutory bodies or non-profit organisations.

Although the assessment will need to be conducted for all the directors of an HKEX-listed company, the Corporate Governance Report does not need to make disclosures on each director on a named basis. HKEX-listed companies should refer to the guidance to be published by the HKEX on the assessment criteria and the level of detail required in relevant disclosures.

Independence of INEDs

New nine-year cap on HKEX-listed company INEDs' Tenure

The HKEX received mixed responses to the proposed nine-year cap on the tenure of INEDs. Some respondents considered that the proposed cap would ensure periodic board refreshment and bring fresh perspectives to the board, while others were of the view that INEDs' independence cannot be solely determined by their length of service and that INEDs who have served on the board for a longer period may bring valuable insights based on their experience and knowledge of the HKEX-listed company.

After considering all the responses, the HKEX has decided to adopt the hard cap of nine-years by adding new HKEX Main Listing Board Rule 3.13A and GEM Listing Rule 5.09A. As stated in the HKEX Corporate Governance Consultation Conclusions, the HKEX's aim in implementing this requirement is to encourage board refreshment and prevent "groupthink". Under the new HKEX Listing Rules, INEDs serving for more than nine-years (**Long-Serving INEDs**) will not be considered as independent and can only continue to serve the listed company in the capacity of a non-executive director or executive director. The nine-year limit will start from the date of the appointment of the INED or the date of listing if the INED is appointed before the company is listed on the HKEX. If the INED ceases to serve as an INED for the HKEX-listed company for less than three years and is subsequently re-appointed by the same HKEX-listed company to serve as an INED, this gap period will also be counted towards the nine-year tenure limit. The HKEX will also adopt a lengthened cooling-off period, under which Long-Serving INEDs can be re-appointed as INEDs by the same HKEX-listed company only if the relevant Long-Serving INED has not been a director of the relevant HKEX-listed company, its holding company, any of their respective subsidiaries or core connected persons for three years and satisfies the independence guidelines under the HKEX Listing Rules.

Taking into account the comments from respondents regarding difficulties in recruiting suitable directors to replace Long-Serving INEDs, the HKEX will adopt the following two-phased approach in implementing this requirement to allow more time for HKEX-listed companies to identify suitable director candidates:

1. Phase 1 – HKEX-listed companies must ensure that Long-Serving INEDs do not represent the majority of INEDs on the board by the first annual general meeting held on or after 1 July 2028;

2. Phase 2 – the nine-year cap on INEDs' tenure will be effective for all INEDs by the first annual general meeting held on or after 1 July 2031.

The HKEX reiterated in the HKEX Corporate Governance Consultation Conclusions that the current requirements on tenure disclosure and appointment of new INEDs when all of the INED are Long-Serving INEDs under Code Provision B.2.4 and the current requirements on the re-election of Long-Serving INEDs under Code Provision B.2.3 will continue to apply during the transition periods.

Similar to the cap on INEDs' concurrent directorships, the cap on the tenure of INEDs will not apply to secondary listed overseas listed companies pursuant to HKEX Main Board Rule 19C.11.

Disclosure of the length of tenure of each HKEX-listed company director

The HKEX will adopt the proposed amendments to Mandatory Disclosure Requirement B(a) to require HKEX-listed companies to disclose the length of tenure and current period of appointment of all directors in their corporate governance report. As explained in the HKEX Corporate Governance Consultation Conclusions, the HKEX received views that the requirement may improve transparency and aid shareholders in deciding on issues relating to board succession.

HKEX-listed Company Board & Workforce Diversity Proposals

At least one director of a different gender on the HKEX-listed company nomination committee

The HKEX will adopt new Code Provision B.3.5 to require at least one director of a different gender to be appointed to the nomination committee of HKEX-listed companies. The HKEX is of the view that as the nomination committee is primarily responsible for board appointments, this requirement will improve board diversity and broaden HKEX-listed companies' exposure to a greater number of potential director candidates.

HKEX-listed company workforce diversity policy

The HKEX will also adopt the amendments to HKEX Main Board Rule 13.92(1), GEM Rule 17.104(1) and Mandatory Disclosure Requirement J(b) to impose a new requirement for HKEX-listed companies to maintain and disclose a workforce diversity policy in addition to a board diversity policy. The HKEX stated in the HKEX Corporate Governance Consultation Conclusions that this requirement aims to promote inclusion and diversity in the whole workforce.

Under the amended HKEX Listing Rules and Mandatory Disclosure Requirement, the corporate governance report must include the full workforce diversity policy or a summary of it with details of:

(i) any plans or measurable objectives, for example, numerical targets and timelines, for achieving gender diversity;

(ii) the progress on achieving these objectives; and

(iii) where applicable, any mitigating factors which make achieving gender diversity in the workforce less relevant or more challenging.

The HKEX acknowledged that it may be challenging for some HKEX-listed-companies to set measurable objectives due to the size of the company and the characteristics of the relevant industry. For this reason, the setting of measurable objectives for workforce diversity is not compulsory.

Annual review of HKEX-listed company board diversity policy

The HKEX will also adopt the amendments to Mandatory Disclosure Requirement J(a) which will require HKEX-listed companies to review the implementation of their board diversity policy at least once every year and disclose the results of the review in their corporate governance report. The disclosure on board diversity should include: (i) the measurable objectives (such as numerical targets and timelines) the HKEX-listed company has set to promote gender diversity on its board; (ii) measures adopted to develop a pipeline of potential successors to the board to achieve gender diversity; and (iii) the results of the review of the implementation of its board diversity policy, including the progress towards achieving the board diversity objectives and how the HKEX-listed company has arrived at the disclosed conclusion. According to the HKEX Corporate Governance Consultation Conclusions, the HKEX is of the view that these reviews and disclosures will assist HKEX-listed companies to reflect on whether the board diversity policy is adhered to and whether the diversity goals are met. The HKEX clarified that annual reviews will still be required even if the HKEX-listed company has already achieved its current board diversity objectives and that HKEX-listed companies should consider the need for a more gender diverse board even though the HKEX Listing Rules do not prescribe a fixed gender ratio.

HKEX-listed companies' separate disclosure of senior management and workforce gender ratios

The HKEX will also require separate disclosures of the gender ratio of the workforce excluding senior management and the gender ratio of senior management under the amendments to Mandatory Disclosure Requirement J(c). The HKEX explained in the HKEX Corporate Governance Consultation Conclusions that separate disclosures will provide shareholders with a clearer perspective of the gender ratio of HKEX-listed companies and enable HKEX-listed companies to better assess whether their diversity strategies are effective.

Codification of arrangements during temporary deviations

The HKEX's existing guidance on arrangements during temporary deviations from the requirement for HKEX-listed companies to have directors of different genders on the board will be codified in HKEX Main Board Listing Rule 13.92(2) and GEM Listing Rule 17.104(2). Under the amended HKEX Listing Rules, HKEX-listed companies that cannot comply with the requirement of those HKEX Listing Rules to have at least one director of a different gender on the board must immediately publish an announcement explaining the details and reasons for the breach. The HKEX-listed company must also use all reasonable endeavours to re-comply with this requirement on a timely basis and, in any case, within three months of the breach.

HKEX-listed Company Risk Management and Internal Control Systems

Emphasis on the HKEX-listed company board's responsibility for risk management and internal control systems and mandatory annual review of these systems

The HKEX will adopt the proposal to upgrade the requirement to conduct (at least) annual reviews of the effectiveness of the risk management and internal control systems of the HKEX-listed company and its subsidiaries to a mandatory one under Mandatory Disclosure Requirement H. It will also adopt the proposed amendments to Principle D2 and Code Provision D.2.1 which emphasise the board's responsibility for HKEX-listed companies' risk management and internal controls and the conduct of at least annual reviews of their effectiveness. The HKEX stated in the HKEX Corporate Governance Consultation Conclusions that in the light of ever-changing business environments, regular reviews of risk management and internal control systems are important to ensure that risks are identified and remediated in a timely manner.

As stated in the HKEX Corporate Governance Consultation Conclusions, the enhanced disclosure requirements are also aimed at providing shareholders with more insight on the management of risks and internal controls of the HKEX-listed company.

The amended Mandatory Disclosure Requirement H will require HKEX-listed companies to disclose the following information in relation to the annual review of their and their subsidiaries' risk management and internal controls:

(i) a board statement acknowledging its responsibility for the HKEX-listed company's risk management and internal control systems and a statement confirming that the risk management and internal control systems are appropriate and effective;

(ii) the main features of the risk management and internal control systems in place (including the process used to identify, evaluate and manage significant risks and the procedures for ensuring timely and accurate disclosures);

(iii) significant changes in the assessment of risks and the risk management and internal control systems;

(iv) whether the HKEX-listed company has an internal audit function;

(v) the responsibilities of internal departments and external providers for the review;

(vi) the process used to conduct the review of the risk management and internal control systems and the frequency of reviews;

(vii) confirmations from management, the relevant board committee(s), other internal departments, the company's independent auditors and/or other external providers to support the board's conclusion that the risk management and internal control systems are appropriate and effective;

(viii) the scope of the review; and

(ix) results of the review and details of any significant control failings or weaknesses identified during the review and/or previously reported but remaining unresolved, and any remedial steps taken or proposed.

The HKEX will not mandate that annual reviews be conducted externally to provide flexibility for HKEX-listed companies to adopt a mode of review that best suits their circumstances. Appropriate disclosures must be made depending on the mode of review adopted.

Amended Code Provision D.2.1 will set out the scope of the annual review and will state that these reviews should cover all material controls of HKEX-listed companies and their subsidiaries including financial, operational and compliance controls. The HKEX Corporate Governance Consultation Conclusions emphasised that HKEX-listed companies must also review the risk management and internal control systems of each subsidiary to cover possible business risks. Code Provision D.2.1 will also require HKEX-listed companies to conduct reviews of the adequacy of various types of resources for designing, implementing and monitoring the risk management and internal control systems. HKEX-listed companies should reference the guidance to be issued by the HKEX on the level of detail required in relevant disclosures and the scope of the review.

HKEX-listed Company Dividend Proposals

Disclosure of HKEX-listed company dividend policy and board dividend decisions

The HKEX will implement the proposal to require disclosure of the dividend policy and the dividend decisions of the board of HKEX-listed companies. Mandatory Disclosure Requirement M will be introduced to require HKEX-listed companies with a dividend policy to disclose this policy or a summary of it in their corporate governance reports. If the HKEX-listed company chooses to maintain a dividend policy, the HKEX-listed company must also disclose the following:

(i) the aim or objective of the policy;

(ii) the key considerations of the board when deciding whether to recommend payment of a dividend; and

(iii) either a confirmation that all dividend decisions made during the reporting period conform with the dividend policy or an explanation of any deviations from the dividend policy.

If the HKEX-listed company does not maintain a dividend policy, it must disclose this fact in its corporate governance report and give reasons for not doing so.

Regardless of whether a dividend policy is maintained, all HKEX-listed companies must disclose the reason(s) for any material variation in the dividend rate declared compared to that for the previous corresponding period if the board has declared a dividend during the reporting period. If the board has not declared any dividend during the reporting period, the HKEX-listed company must disclose the reasons for the board's decision and any alternative measures to enhance investor return. The HKEX noted in the HKEX Corporate Governance Consultation Conclusions that HKEX-listed companies are not expected to include confidential or commercially sensitive information in their disclosure. It also encourages HKEX-listed companies to consider adopting alternative capital management measures to increase investor returns.

Other HKEX Listing Rule Changes

New requirement to set a record date

The HKEX will amend HKEX Main Board Listing Rule 13.66(1) and GEM Listing Rule 17.78(1) to codify the existing guidance on the requirement to set a record date to determine the eligibility of shareholders to attend general meetings and receive corporate entitlements. As stated in the HKEX Corporate Governance Proposals and in the current guidance, the HKEX will not impose strict requirements on the timing of the record date but will encourage HKEX-listed companies to set the record date as close to the date of the general meeting as possible to reduce the risk of "empty voting".

The HKEX will also make consequential amendments to the HKEX Listing Rules to require HKEX-listed companies to make announcements of the record date and any alterations to the announced record date when there is no book closure.

Disclosure requirements in relation to modified auditors' opinions

As stated in the HKEX Corporate Governance Consultation Conclusions, the HKEX is of the view that adequate disclosure regarding modified auditors' opinions will allow shareholders to make informed assessments of the audit modifications and their impact on the financial situation of the relevant HKEX-listed company. The HKEX will therefore amend Paragraph 3.1 of Appendix D2 to the HKEX Main Board Listing Rules and the Note to GEM Listing Rule 18.47 to codify the disclosure requirements regarding modified auditors' opinions and require disclosure of the following information:

(i) details of the modifications and their actual or potential impact on the HKEX-listed company's financial position;

(ii) the management's position and basis concerning major judgmental areas and how the management's view differs from that of the auditors;

(iii) the audit committee's view towards the modifications, and whether the audit committee has reviewed and is in agreement with the management's position concerning major judgmental areas; and

(iv) the proposed plans to address the modifications.

The HKEX clarified in the HKEX Corporate Governance Consultation Conclusions that "major judgmental areas" will include circumstances where the divergence in opinion between the management and the auditors of the HKEX-listed company resulted in a modified audit opinion, for example, where the management disagreed with the auditor's request for audit evidence.

Provision of monthly financial information to the HKEX-listed company board

The HKEX will also adopt the amendments to Code Provision D.1.2 with minor drafting changes, which will give directors the right to receive available monthly management accounts and updates as to the HKEX-listed company's finances, operating performance and future prospects and to request this information if management fails to provide it. Revised Code Provision D.1.2 additionally provides that directors should request this information if it is not provided by management. The HKEX noted in the HKEX Corporate Governance Consultation Conclusions that the revised Code Provision will impose an obligation on management to provide information that it has prepared in the ordinary course of the HKEX-listed company's business.

Alignment of HKEX-listed companies' nomination, audit and remuneration committee requirements

The HKEX will also amend HKEX Main Board Listing Rules 3.23 and 3.27 and GEM Listing Rules 5.33 and 5.36 to clarify that when an HKEX-listed company is unable to meet the requirements on setting up an audit or remuneration committee and/or providing written terms of reference, the HKEX-listed company must announce the details and reasons for the breach immediately and re-comply with the rule within three months from the breach.

Unlike the requirements for audit and remuneration committees, there is no requirement to provide terms of reference for the nomination committee under the current HKEX Listing Rules. As proposed in the HKEX Corporate Governance Proposals, new HKEX Main Board Listing Rules 3.27B and 3.27C and GEM Listing Rules 5.36B and 5.36C (which will be applicable to all HKEX-listed companies except those with a weighted voting rights structure) and new HKEX Main Board Listing Rule 8A.28A (which will be applicable to HKEX-listed companies with a weighted voting rights structure) will be implemented to align the requirements across all committees with the aim of ensuring consistency. Under the new HKEX Listing Rules, HKEX-listed companies will be required to approve and maintain a written terms of reference for the nomination committee that clearly establish the authority and duties of the nomination committee. If an HKEX-listed company is unable to set up a nomination committee or comply with the requirements as to its composition or terms of reference, the HKEX-listed company will have to issue an announcement immediately with details and reasons for the breach and ensure re-compliance with the rule within three months from the breach.

Other comments received and other consequential amendments

The HKEX also noted in the HKEX Corporate Governance Consultation Conclusions that some respondents had suggested increasing the minimum number of INEDs to a majority of the members of the board to increase the involvement of INEDs in board matters and enhance talent refreshment. Additionally, some respondents suggested requiring the nomination committee to be chaired by an INED to align with the requirements applicable to the audit and remuneration committees. Other respondents suggested that the HKEX should conduct a market survey of INED remuneration in Hong Kong and include requirements in the HKEX Listing Rules to ensure that INEDs are appropriately remunerated. As these suggestions are not within the scope of the HKEX Corporate Governance Proposals, they are not addressed in the HKEX Corporate Governance Consultation Conclusions, but they may be considered by the HKEX in future consultations.

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