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Consultation on Review of
CORPORATE
GOVERNANCE CODE AND
RELATED LISTING RULES

2024

Introduction

- **Corporate Governance Code**
 - Mandatory Disclosure Requirements → Compulsory
 - Principles + Code Provisions → Comply or explain
 - Recommended Best Practices → Voluntary guidelines
- Consultation Paper: Review of Corporate Governance Code and related Listing Rules published June 2024
- **5 key aims:**
 - Improving board effectiveness
 - Increasing board independence
 - Increasing board + workforce diversity
 - Enhancing CG Code's risk management + internal control provisions
 - Improving Listcos' capital management by increasing dividend-related disclosures
- Consultation closed **16 August 2024**
- Implementation Date: **1 January 2025 (with 3-year transition for LRs on INEDs)**

Lead INED

- **New CP C.1.7** to require appointment of a Lead INED where board chairman is not an INED **+/or** same person is both CEO + board chairman
 - Note to CP C.1.7: a Chairman who is an INED is expected to act as Lead INED (unless another INED is appointed to that role)
- **Lead INED's Role:**
 - intermediary between other directors + shareholders
 - alternative communications channel for shareholders/directors if normal communication channels with chairman or board are inadequate
 - Exchange will provide guidance on the role
- **Rationale:** to improve communications between shareholders + board (particularly INEDs)
- Lead INED designation is *"not intended to create a separate or higher level of responsibility or liability relative to other INEDs"*
- Lead INEDs NOT expected to respond to questions re. ListCos' operations (Consultation Paper para 29)

Lead INED (Cont'd)

Requirements on other exchanges

- **UK: Comply or explain provision** requires a Lead INED to provide a sounding board for chair + act as intermediary for shareholders/ other directors
- UK-listed company shares are widely held while HK Listcos typically have majority shareholder
- **Singapore: Comply or explain provision** requires a Lead INED where Chairman is conflicted or not independent
- **NASDAQ and NYSE: No Lead INED requirement**
- In US, Lead INED role developed to counter conflict of interest inherent in combined CEO/chair position

CURRENT REQUIREMENTS

- **CP C.1.1: newly appointed Listco directors must receive “comprehensive, formal and tailored induction”**
- **CP C.1.4: Listco directors must do continuous professional development (CPD) training emphasising Listco directors’ roles, obligations + duties**
- **MDR B(i): Disclosure of how directors complied with CP C.1.4**

Mandatory Directors’ Training

PROPOSALS:

New Listing Rule requirements:

- All Listco directors must participate in continuous professional development (**CPD**) on specified topics (MB Rules 3.09F + 3.09G / GEM Rules 5.02F + 5.02G)
- Mandatory 24-hour induction training for “first time directors” in first 18 months of appointment
- Definition of “**first time directors**”:
 - directors with no experience as an HK Listco director
 - directors who have not been an HK Listco director for ≥ 3 years
- Mandatory induction training would be additional to general induction training for all new directors under CP C.1.1

Revised MDR B(i) – Listcos must disclose:

- Each director has complied with LR on induction and CPD training
- Specified details of each director’s CPD training (no. of hours, topics covered etc.)

Mandatory Directors' Training (Cont'd)

Directors' induction + CPD training – Specified Topics (MB Rule 3.09G/ GEM Rule 5.02(G))

- Roles, functions + responsibilities of the board, its committees + directors, + board effectiveness
- Listco's obligations + directors' duties under HK law + Listing Rules
- Key legal + regulatory developments
- Corporate governance + ESG
- Risk management + internal controls
- Updates on industry developments, business trends + relevant strategies

Mandatory Directors' Training (cont'd)

- **SGX:**
 - induction training by external course providers for “first-time” directors
 - “first-time” directors = directors who have never been a director of an SGX-listed company
- **ASX:** Comply or explain provision: induction programme for new directors + regular review of need for existing directors' training
- **NYSE:** Listcos' corporate governance guidelines must cover director orientation + continuing education arrangements

Board Performance Reviews

- Board performance reviews to be upgraded from RBP to CP
- **Current RBP B.1.5:** Listco board should conduct regular evaluations of its performance
- **New CP B.1.4:**
 - Board performance reviews at least every 2 years
 - Corporate Governance Report disclosure of (a) review's scope + findings, significant areas for improvement + measures taken/planned (b) internal or external (c) connection between external provider + Listco or its directors
- **Review's focus** – board performance as a whole (not of individual directors)

Board Performance Reviews (Cont'd)

UK

- Annual board performance review
- Chair to commission regular external review
- FTSE 350 companies to conduct external board review at least every 3 years

NYSE

- Annual self-evaluation of board performance

SGX

- Nomination Committee sets the process + criteria for board performance reviews

Board Skills Matrix

CURRENT

- **Code Provision B.3.1(a):** Nomination Committee must annually review board's structure, size + composition, including its skills, knowledge + experience

PROPOSAL: New CP B.1.5: Listcos to maintain + disclose in CG Reports a board skill matrix:

- board's current skill mix
- explanation of how board's skills, experience + diversity serve ListCo's purpose, values, strategy + desired culture
- skills the board is looking for + plans to acquire them
- how Listco achieved plans to acquire additional skills in past years

ASX

- **Comply or explain provision:** Listcos should have + disclose matrix of skills board has + is looking for

SGX

- **LR requires description in annual reports of how directors' skills, talents, experience + diversity combine to serve Listco's needs and plans**

NASDAQ + NYSE

- **No requirement**
- **Listcos typically disclose a board matrix in the proxy statement + meeting notice issued before annual meeting for board appointment/re-appointment**

INEDs: Hard Cap of 6 HK Listco Directorships

PROPOSED

- **New MB LR 3.12A/ GEM LR 5.07A:** hard cap of 6 concurrent Listco directorships (including as executive or non-executive directors or as INED)
- From **1 Jan 2025**, Exchange will not accept listing applications from applicants with INEDs with ≥ 7 HK Listco directorships
- **Transitional Provisions:** Existing Listcos have until 1st AGM after **31 December, 2027** to comply
- At **31 Dec 2023:** 23 INEDs served on ≥ 7 HK Listco boards involving 181 Listcos (7% of HK Listcos); 5 held ≥ 10 Listco directorships

INEDs: Hard Cap of 6 HK Listco Directorships (Cont'd)

- **CP B.3.4(b):** If board proposes appointment of INED holding ≥ 7 Listco directorships, must state why they believe the INED can devote sufficient time to the board. Will be repealed from 1 Jan 2028

Mainland China

- Maximum of 3 INED positions at a time

HK Government guideline

- A person cannot be appointed to serve as a non-official member on more than 6 advisory + statutory bodies

Australia, Singapore, the UK, NASDAQ + NYSE

- No hard cap on number of concurrent directorships
- Some require disclosure of directors' other material directorships

Apple Inc.

- cap of 5 listed company boards (incl. Apple Inc.)

Microsoft Corporation

- cap of 4 listed company boards (incl. Microsoft Corporation)

Directors' Time Commitment

New MDR E(d)(iii):

- **Corporate governance report** to disclose Nomination Committee's annual assessment of each director's time commitments + board contribution + ability to effectively discharge duties taking into account directors' "significant external time commitments"
- "**significant external time commitments**" include directorships of overseas Listcos, full-time occupations, consultancy work, involvement in statutory or non-profit bodies etc.

9-year Hard Cap on INEDs' Tenure

- **Current CP B.2.3:** re-appointment of INED with >9 years service (**Long Serving INED**) requires approval by separate shareholders' resolution + board/ Nomination Committee must state why they believe Long Serving INED is still independent
- **Proposed MB Rule 3.13A/ GEM Rule 5.09A:** an INED will NOT be considered independent after **9 years' service**
 - 9 years includes break of <2 years
- **Long Serving INED** can be re-appointed after **2-year "cooling-off" period**
 - cannot be a director of any group co during the 2 years
- **3-year transition period** - LR takes effect **1 Jan 2028**
 - INED with ≥ 9 yr tenure at 31 Dec 2027 must be replaced by end of 1st AGM held after that date
 - INED whose 9-year tenure ends after 1 Jan 2028 must be replaced by conclusion of AGM held after tenure ends

9-year Hard Cap on INEDs' Tenure (Cont'd)

- at **31 December 2023**, around **1,500 directorships** held by **Long Serving INEDs** of **810 Listcos**
- 30 Listco boards only had Long Serving INEDs
- HKMA Guidance for INEDs of authorised institutions (i.e. banks):
 - >9 years' tenure may impact INEDs' independence



Australia CG Code Commentary to Recommendation 2.3:

- >10 years' tenure may affect director's independence BUT does NOT automatically disqualify an INED
- Board should regularly assess the independence of INEDs with >10 years' service

UK CG Code Provision 10

- >9 years' tenure may impact independence but not prohibited

NYSE + NASDAQ

- No cap on tenure – but Listcos free to impose one
- No distinction between INEDs' + directors' tenure
- Tenure statements typically included in proxy statements on directors' re-election
- JP Morgan's Lead INED has served >20 years as director
NYSE-listed Eli Lilly + Walmart: co. benefits from having long- + short-serving directors

**9-year Hard Cap
on INEDs' Tenure
(Cont'd)**

Disclosure of all Directors' Tenure + Period of Appointment

- **Current: CP B.2.4:** if Listco's INEDs are all Long Serving INEDs, each INED's tenure should be disclosed in shareholders' circular/ explanatory statement sent with notice of AGM
- **Revised MDR B(a):**
 - All Listcos must disclose all directors' length of tenure + period of appointment on named basis in CG Reports

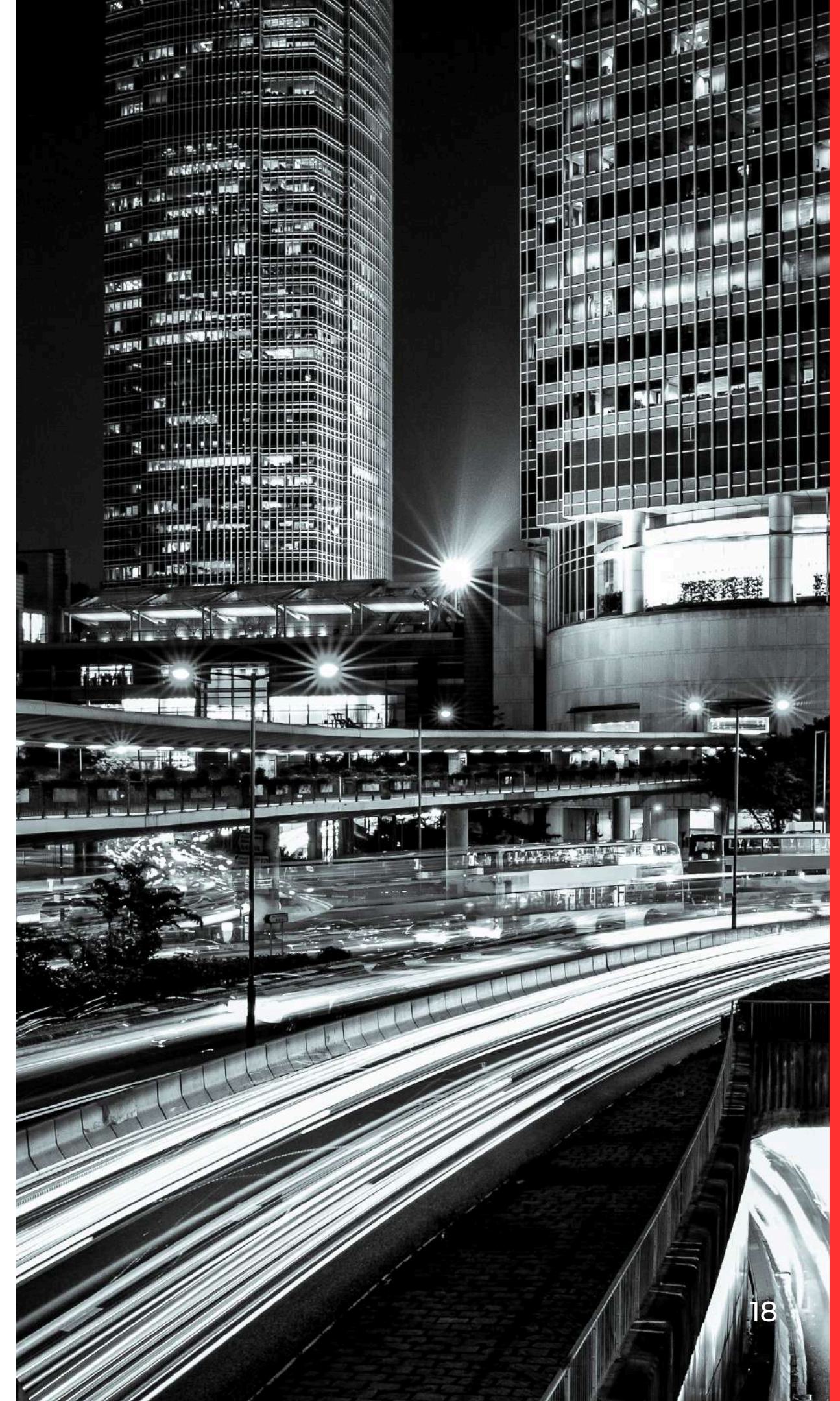
Appointment of 1 Different Gender Director to Nomination Committees

Current LRs:

- **Notes to MB LR 13.92 + GEM LR 17.104**
 - all ListCos must appoint **at least one director of a different gender** to the board before **31 Dec 2024**

Proposed CP B.3.5 (comply or explain)

- at least **one different gender director** to be appointed to a **Listco's Nomination Committee**



Appointment of 1 Different Gender Director to Nomination Committees

Singapore and UK CG Codes

- include gender diversity as one of the factors to consider when appointing individuals to board committees

Australia

- **Australian CG Code commentary**
 - give consideration to the diversity of Nomination Committee's membership to reduce groupthink + cognitive bias

Board and Workforce Diversity

Annual Review of Board Diversity Policy

- CP B.1.3 that the board should review the implementation + effectiveness of its board diversity policy at least annually will be upgraded from “comply or explain” to an MDR (under revised MDR J)

Workforce Diversity Policy

- Proposed new **MB Rule 13.92(1), GEM Rule 17.104(1) + MDR J(b)**:
 - Listcos to have **workforce diversity policy** + disclose it or a summary in their CG Reports
 - At this stage, Listcos would only need to disclose “**any plans** or measurable objectives” for achieving gender diversity at the workforce level



Board and Workforce Diversity (Cont'd)

UK Disclosure Guidance + Transparency Rule 7.2.8AR

- CG statements to describe diversity policies for administrative, management + supervisory bodies + Remuneration, Audit + Nomination Committees

Australian CG Code Recommendation 1.5

- Listcos to set measurable objectives for achieving gender diversity at board, senior executive + workforce levels
- comply or explain

Singapore CG Code CP 2.4

- Board + board committees to be suitably diverse in terms of gender
- Nothing on workforce diversity

Separate Disclosure of Senior Management + Workforce Gender Ratio

CURRENT:

- **MDR J(c)**: disclose and explain workforce gender ratio **including** the senior management

PROPOSAL:

- **Revised MDR J(c)**: separate disclosure of senior management gender ratio + rest of the workforce (excl. senior management) gender ratio

Separate Disclosure of Senior Management + Workforce Gender Ratio

UK: LR 9.8.6(10)

- disclosure of numerical data on gender identity or sex of individuals making up Listcos' executive management

Australia: Corporate Governance Code Recommendation 1.5

- disclosure on **"comply or explain"** basis of respective proportions of men + women in **senior executive positions**

NASDAQ:

- diversity disclosure on "comply or explain" basis stipulates numerical disclosure for board members, but not senior management

NYSE

- No diversity disclosure requirements



Arrangements During Temporary Deviations

- Proposed codification in **MBLR 13.92(2) + GEM LR 17.104(2)** of guidance on arrangements during temporary deviations from requirement for Listcos to have directors of different genders on the board
- From **1 January 2025**, if a ListCo does not have a different gender director, it:
 - must publish an announcement immediately to explain the details + reasons +
 - ensure re-compliance with the LR within 3 months

Risk Management +

Internal Controls: Current

- **CP D.2.1:** board to ensure at least annual review of risk management + internal control (**RMIC**) systems' effectiveness on "comply or explain" basis + disclose conduct of annual review in CG Report
 - no disclosure of review's details or results
- **CP D.2.4:** CG Report disclosure of narrative statement of how RMIC CPs complied with including:
 - processes to identify risks;
 - main features of RMIC systems;
 - board acknowledgement of responsibility
- **MDR H:** confirmation of whether Listco considered its RMIC systems to be effective + adequate
 - no disclosure of how that conclusion was reached
- **RBP D.2.8 + D.2.9:** Listco boards should disclose in CG Report that they have received management confirmation that RMIC systems are effective + details of significant area of concern

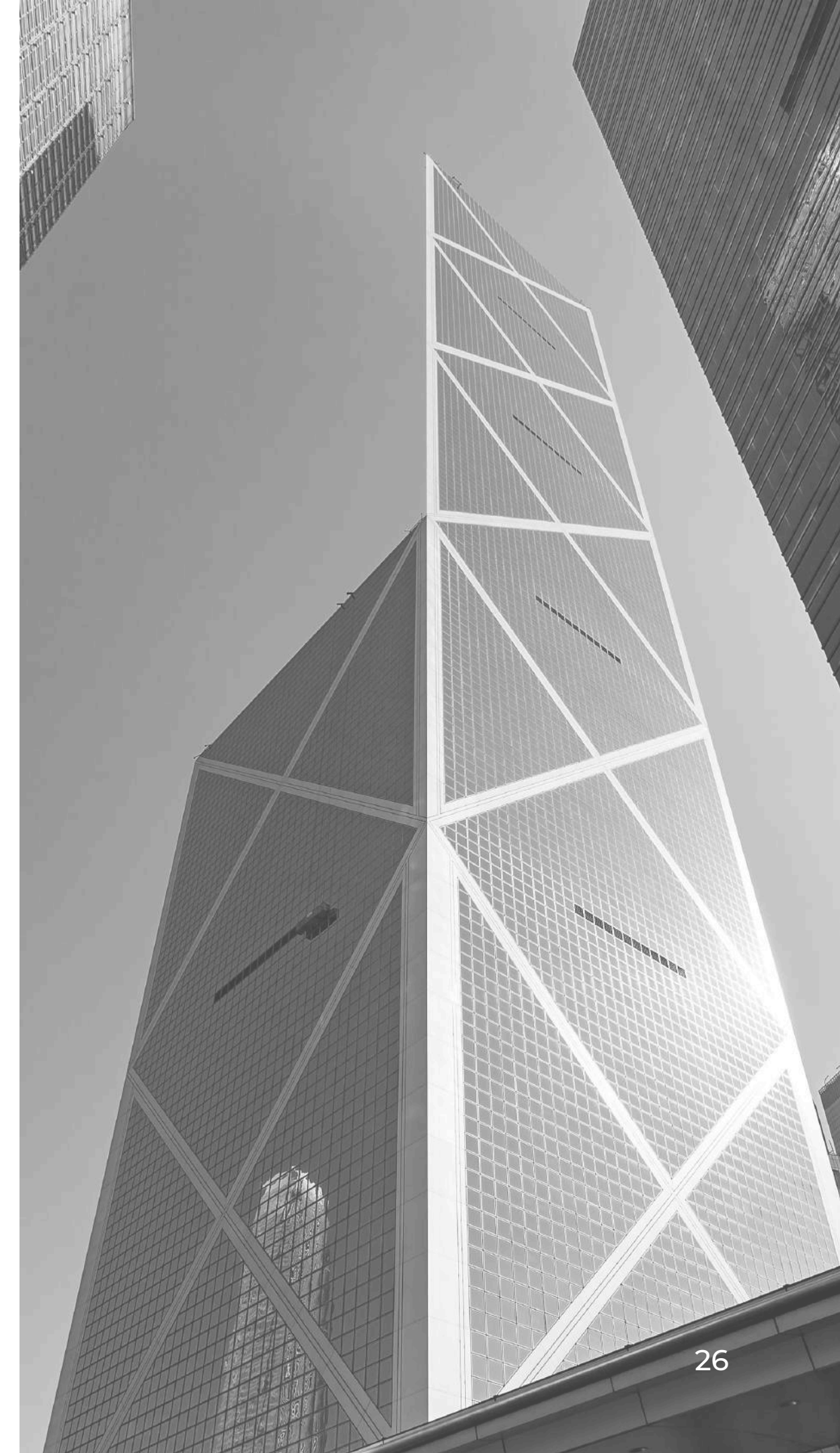
Risk Management + Internal Controls (Cont'd)

As per Consultation Paper:

Listing Rule breaches are often the result of Listcos' failure to implement effective RMIC systems or conduct ongoing monitoring of their continued effectiveness

View of SFC + Accounting and Financial Reporting Council

- a lack of effective RMIC systems can:
 - jeopardise Listco assets
 - reduce effectiveness of fraud prevention policies
 - affect accuracy of financial reporting



Risk Management + Internal Controls (Cont'd)

Proposal: Upgrade existing CP D.2.1 to MDR by revising MDR H:

- mandatory at least annual review
- previous CP D.2.4 disclosure requirements upgraded to MDR:
 - main features of RMIC systems + how identified
 - process used to conduct reviews + their frequency
- **Additional CG Report disclosures:**
 - board confirmation of appropriateness + effectiveness of RMIC systems
 - significant changes in Listco's RMIC systems + assessment of risks (incl. ESG risks);
 - internal departments' + external providers' responsibilities for reviewing effectiveness of Listco's RMIC systems
 - information supporting board conclusion that Listco's RMIC systems are appropriate + effective including any confirmations received (e.g. from management)
 - review's scope + findings including any significant control failings/weaknesses + remedial steps taken or proposed



Risk Management + Internal Controls (Cont'd)

New UK CG Code Provision 29 (from Jan 2026): annual report to disclose:

- declaration of the effectiveness of Listco's material controls
- description of material controls that have not operated effectively
- actions taken or proposed to improve them + to address previously reported issues
- how the board monitored + reviewed effectiveness of Listco's RMIC systems

SGX Listing Rule 1207(10):

- comment on adequacy + effectiveness of Listco's internal controls + risk management systems
- disclose weaknesses identified + steps taken to address them

NYSE

• Listed Company Manual Rule 303A.07

- Listcos must have internal audit function to provide management + audit committee with ongoing RMIC systems assessments
- audit committee responsible for review of major issues re. adequacy of Listcos' internal controls

NASDAQ

- No requirements

Dividends

CURRENT:

- **CP F.1.1:** Listcos should have a dividend payment policy + disclose it in their annual report
- **MB Rule 13.45 / GEM Rule 17.49:** board must announce a decision to declare, recommend or pay a dividend or a decision not to declare, recommend or pay a dividend
 - NOT required to state reasons for the decision

Dividends (Cont'd)

PROPOSAL

- **New MDR M:**

- If Listco has a dividend policy – disclose it or a summary in CG Report + confirm board dividend decisions made in accordance with policy or explain deviation
 - **NOT compulsory** to have a dividend policy
- If **NO** dividend policy – disclose reasons for not having one

- **MDR M: Payment of dividends**

- If dividend **DECLARED**:
 - disclose reasons for any material variation in dividend rate compared to previous corresponding period
- If **NO** dividend declared, disclose:
 - reasons for board's decision +
 - any measures to improve investors' return

Dividends (Cont'd)



Exchange's rationale in Consultation Paper:

- enhance transparency
- allow investors to make more informed investment decisions + better understand Listcos' capital management plans

SGX:

- LR 704(24): must disclose reasons for decision not to declare or recommend a dividend

Mainland China:

- CSRC Listing Regulation Guidance No. 3: must disclose reasons for not paying cash dividend + plans to enhance investor returns

Tokyo + South Korea:

- encourage Listcos' management to give greater consideration to cost of capital + profitability, rather than just sales and profit levels (e.g. by investing in R&D to increase growth in medium- to long-term)

Requirement to Set a Record Date

CURRENT:

- **Main Board Rule 13.66(1) + GEM Rule 17.78(1):**
 - announcement of closure of Listcos' transfer books or register of members

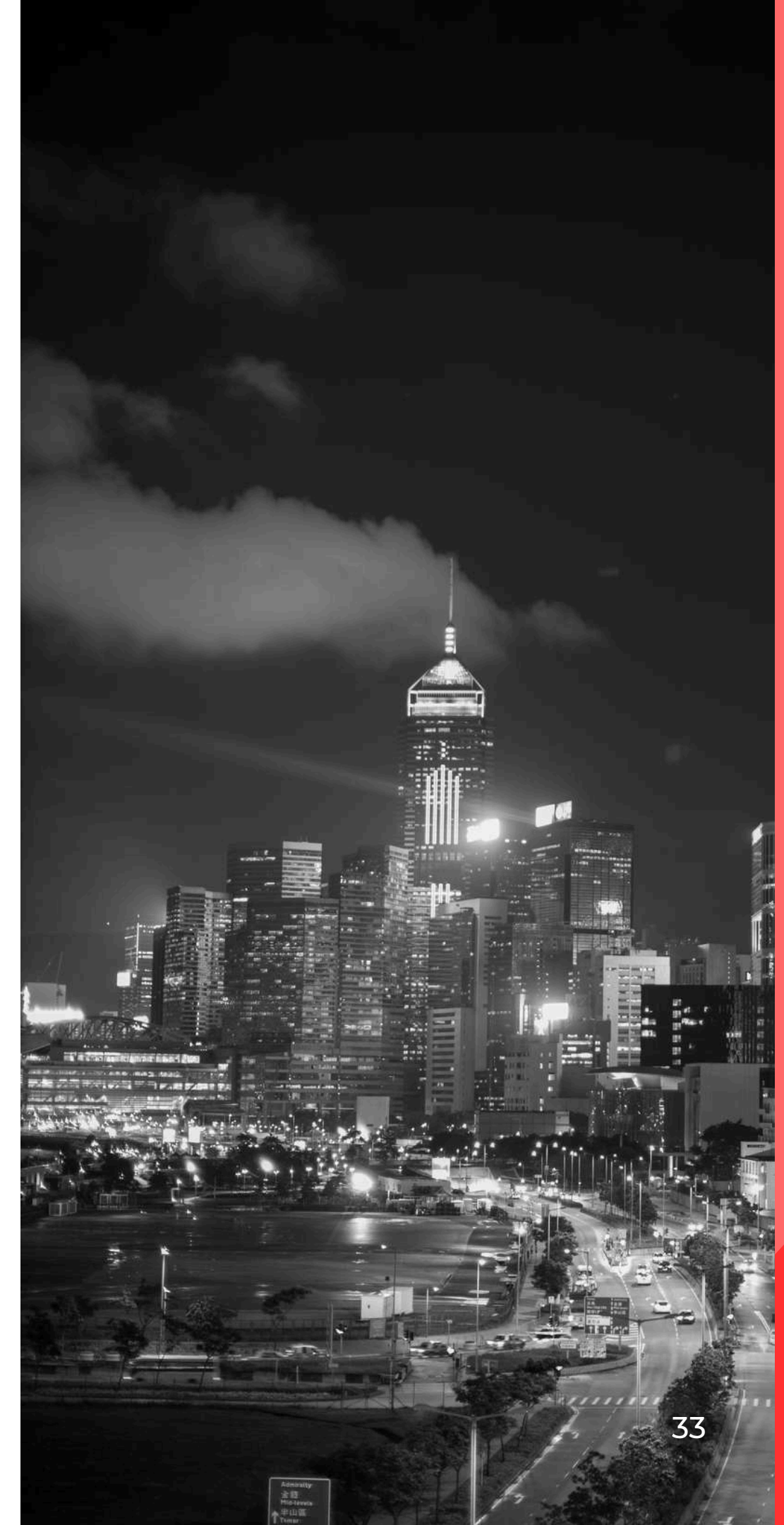
 - **Guide on Distribution of Dividends and Other Entitlements + Guide on General Meetings**
 - Listcos expected to set record date for general meetings + entitlements
-

Requirement to Set a Record Date (Cont'd)

PROPOSAL:

MB Rule 13.66(1) / GEM Rule 17.78(1):

- **Listcos must set + announce** record date for eligibility to attend + vote at general meetings + receive entitlements
- **Rights issue:** announcement \geq 6 business days before record date (if no book closure) or before date of book closure
- **All other cases:** announcement 10 business days before record date (if no book closure) or before date of book closure
- No requirement on record date timing
- Guidance will recommend short interval between record date + date of general meeting or payment date for entitlement



CURRENT

- **Para 3 of Appendix D2 to MBLR + GEM LR 18.47**
 - Listco must provide additional information if financial statements do not reflect its true financial situation or operations
 - no prescribed content requirement
- **2023 Review of Issuers' Annual Reports**
 - Recommended annual report disclosures where Listco receives modified auditors' opinion

Modified Auditors' Opinions

PROPOSAL: Minimum disclosure for Listco with modified auditors' opinion (Paragraph 3.1 of Appendix D2 to MB Rules / Note to GEM Rule 18.47):

- details of modifications + actual/potential impact on financial position
- management's position + basis on major judgmental areas + how management's + auditors' views differ
- audit committee's view of modifications + whether it agrees with management
- ListCo's plans to address the modifications

Provision of Monthly Updates to Directors

CURRENT:

- **CP D.1.2:** management required to update the board monthly re. Listco's performance + prospects
 - Note to CP D.1.2: Information provided to board *may* include monthly management accounts + management updates

PROPOSAL: Revised CP D.1.2

- Monthly management accounts + updates **SHOULD** be provided to directors
- Directors **SHOULD** request this information if not provided by management

Audit + Remuneration + Numeration Committee Requirements

Aligning requirements

- **Numeration Committee** (like audit + remuneration committees) must have written terms of reference
- **Arrangements on failure to establish committee or meet any of committee requirements**
 - **Listco must:**
 - issue announcement with details + reasons
 - re-comply within **3 months**
 - Revised MB Rules 3.23 + 3.27 / GEM Rules 5.33 + 5.66 and new MB Rules 3.27B + 3.27C / GEM Rules 5.36B + 5.36C / GEM Rule 5.36 (Remuneration Committee) + new MB Rule 8A.28A for WVR Listcos

Proposed Implementation Timeline

<p>CG Code and Listing Rule Amendments</p>	<p>Effective 1 Jan 2025</p> <ul style="list-style-type: none">• Annual + CG Reports for financial years commencing after 1 Jan 2025 must comply
<p>INEDs: Hard caps of 6 concurrent Listco directorships + 9 years' tenure</p>	<p>Effective 1 Jan 2028</p> <ul style="list-style-type: none">• 3-year transition period• Listcos must comply by end of 1st AGM after 31 December 2027