

Client Alert

Corporate Finance

17 December 2021

New corporate governance requirements for HK listed companies/listing applicants will come into effect in January 2022

On 10 December 2021, The Stock Exchange of Hong Kong Limited (**Exchange**) published [consultation conclusions](#) on review of the Corporate Governance Code (**CG Code**) set out in Appendix 14 to the Rules (**Listing Rules**) Governing the Listing of Securities on the Exchange¹ (**Appendix 14**) and the related Listing Rules.

The consultation proposals include new measures aimed at further enhancing corporate governance (**CG**) standards among listed issuers in Hong Kong, specifically in the areas of corporate culture, director independence, diversity, nomination committee, communications with shareholders and Environmental, Social and Governance (**ESG**) reporting.

Most of the proposals will be adopted with certain modifications or clarifications. For instance, in respect of the proposal to upgrade a Code Provision (**CP**) to a Listing Rule to require establishment of a nomination committee chaired by an Independent non-executive director (**INED**) and comprising a majority of INEDs, the Exchange has modified the proposal such that either the board chairman or an INED is allowed to chair the committee. The proposal to require independent shareholders' approval for re-election of INEDs serving more than nine years (**Long Serving INEDs**) will not be adopted.

Key amendments to the CG Code and the Listing Rules

A. CG

1. Corporate culture

	Implementation
(1) <i>New CP A.1.1</i> – To require an issuer's board to align the company's culture with its purpose, value and strategy.	Financial year commencing on or after 1 Jan 2022
(2) <i>New CP D.2.7</i> – To require establishment of anti-corruption policy.	
(3) <i>Upgrading Recommended Best Practice (RBP) to CP D.2.6</i> – To require establishment of a whistleblowing policy.	

2. Board independence

	Implementation
(1) <i>New CP B.1.4</i> – To require an issuer to establish mechanism(s) to ensure independent views and input are available to the board and disclose such mechanism(s) in its CG Report. The board should review the implementation and effectiveness of such mechanism(s) on an annual basis.	Financial year commencing on or after 1 Jan 2022
(2) <i>Revised CP B.2.3</i> – To require additional disclosure in the papers to shareholders accompanying the resolution for the further appointment of a Long Serving INED on the factors considered, the process and the board or nomination committee's discussion in arriving at the determination in the explanation on why such INED is still independent and should be re-elected.	Financial year commencing on or after 1 Jan 2022

¹ Appendix 15 to the Rules Governing the Listing of Securities on GEM (**GEM Rules**).

(3) <i>New CP B.2.4</i> – To require issuers whose INEDs are all Long Serving INEDs to: <ul style="list-style-type: none"> (a) appoint a new INED at the forthcoming annual general meeting; and (b) disclose the length of the tenure of the Long Serving INEDs on the board on a named basis in the shareholders' circular. 	For (a) - Financial year commencing on or after 1 Jan <u>2023</u> For (b) - Financial year commencing on or after 1 Jan 2022
(4) <i>New RBP E.1.9</i> – An issuer generally should not grant to INEDs equity-based remuneration (e.g. share options or grants) with performance-related elements.	Financial year commencing on or after 1 Jan 2022

3. Diversity – in particular gender diversity

	Implementation
(1) <i>Revised Listing Rule 13.92²</i> – To highlight that the Exchange will not consider diversity to be achieved by a single gender board.	1 Jan 2022 – subject to the transitional arrangements stated below.

Transitional arrangements:

- For listed issuers: Issuers with a single gender board will have to appoint at least a director of a different gender on the board **no later than 31 December 2024**. The Exchange expects these issuers to consider appointing a director of a different gender as soon as any existing director is due for retirement under the rotation requirement, and should not wait for the expiry of the transition period. Single gender board issuers who have made a commitment in the listing document with objectives set for implementing gender diversity should appoint a director of a different gender in accordance with such commitment.
- For new listing applicants: For **A1 submission filed on or after 1 July 2022**, applicants with single gender board would not be accepted. Applicants should at the time of the A1 submission at least identify a director of a different gender, whose appointment should be effective upon listing.

	Implementation
(2) <i>New Mandatory Disclosure Requirement (MDR) (paragraph J)</i> – To require all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at board level. For the workforce, issues will have to disclose and explain the gender ratio in the workforce (including senior management), any plans or measurable objectives the issuer has set for achieving gender diversity and any mitigating factors or circumstances which make achieving gender diversity across the workforce (including senior management) more challenging or less relevant.	Financial year commencing on or after 1 Jan 2022
(3) <i>New CP B.1.3</i> – To require the board to review the implementation and effectiveness of its board diversity policy annually.	Financial year commencing on or after 1 Jan 2022
(4) Part 1 of Form B and Form H of Appendix 5 to the Listing Rules ³ will be amended to require directors providing gender information upon appointment. The Exchange will display board diversity related information (with an initial focus on gender information) on the HKEX website.	1 Jan 2022

² GEM Rule 17.104.

³ Part 1 of Form A and Form B of Appendix 6 to the GEM Rules.

4. Nomination committee

	Implementation
<i>Upgrading CP to Listing Rule 3.27A⁴</i> – To require establishment of a nomination committee chaired by the chairman of the board or an INED and comprising a majority of INEDs.	1 Jan 2022

5. Communications with shareholders

	Implementation
<i>Upgrading CP to MDR (paragraph L)</i> – To require issuer to disclose its shareholder communication policy and review the effectiveness of the policy on an annual basis.	Financial year commencing on or after 1 Jan 2022

6. Others

	Implementation
(1) <i>New Listing Rule 13.39(5A)⁵</i> – To require disclosure of directors' attendance at general meetings in the poll results announcements.	1 Jan 2022
(2) <i>Deletion of CP A.4.1</i> that requires issuers to appoint non-executive directors for a specific term.	

B. ESG

7. Linkage between CG and ESG

	Implementation
<i>New introductory paragraph in the CG Code and revised Principle D.2 and CP D.2.2 and CP D.2.3</i> – To elaborate the linkage between CG and ESG in the CG Code by: (a) setting out the relationship between CG and ESG in the introductory section in the CG Code; and (b) including ESG risks in the context of risk management under the CG Code.	1 Jan 2022

8. Timing of publication of ESG reports

	Implementation
<i>Revised Listing Rule 13.91(5)(d)⁶ and ESG Guide (paragraph 4(2)(d))</i> – To require publication of ESG reports at the same time as publication of annual reports.	Financial year commencing on or after 1 Jan 2022

C. Re-naming and re-arranging the structure of Appendix 14

9. Re-naming Appendix 14

	Implementation
Appendix 14 will be renamed as “Corporate Governance Code” from the current name of “Corporate Governance Code and Corporate Governance Report”.	1 Jan 2022

10. Re-arranging the structure of Appendix 14

	Implementation
To re-arrange the structure of Appendix 14 to enhance the flow and readability by: <ul style="list-style-type: none">• amending the introductory paragraphs to reflect the CG reporting framework;• moving the MDRs upfront in Appendix 14;• re-organising the provisions by topics; and	1 Jan 2022

⁴ GEM Rule 5.36A.

⁵ GEM Rule 17.47(5A).

⁶ GEM Rule 17.103(5)(d).

- making drafting amendments to improve clarity of the requirements (including deleting duplicative requirements).

Please refer to Appendix III to the [consultation conclusions](#) which sets out a reference table comparing the structure of the current Appendix 14 and the re-arranged Appendix 14.

New set of guidance

The Exchange published a new set of guidance "[Corporate Governance Guide for Boards and Directors](#)" to assist issuers' compliance with the new CG requirements.

The new Guide consolidates the current thinking and expectations of issuers and stakeholders regarding governance practices, and should be read alongside the revised CG Code.

Want to know more?

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4

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