

Please provide the following information about your company/organisation. A statement on HKEX's privacy policy is set out in Appendix IV to the Consultation Paper.

Company/Organisation Name\*:

Council of Institutional Investors

Company/Organisation Type\*:

- ☐ Accounting Firm
- ☐ Corporate Finance Firm / Bank
- ☐ HKEX Participant
- ☐ Investment Manager
- ☐ Law Firm
- ☐ Listed Company
- ☒ **Professional Body / Industry Association**
- ☐ Others (please specify)

Contact Person\*:

- ☒ **Mr.**
- ☐ Miss
- ☐ Ms.
- ☐ Mrs.
- ☐ Mx.

Name\*:

Job Title:

Phone Number\*:

Email Address\*:

Important note: All fields marked with an asterisk (\*) are mandatory. HKEX may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.

### **Disclosure of identity**

HKEX may publish your identity together with your response. Respondents who do NOT wish their identities to be published should check the box below; otherwise, please click "Next":

☐ I/We do NOT wish to disclose my/our identity to the members of the public.

### **Question 1**

Do you agree with our proposal to introduce a new Code Provision (CP) under the Corporate Governance Code (CG Code) requiring issuers without an independent board chair to designate one independent non-executive director (INED) as a Lead INED to enhance engagement with investors and shareholders?

☒ **Yes**

☐ No

Please provide reasons for your views.

The Council of Institutional Investors (CII) adopts policies that are best practices in corporate governance. CII is a nonprofit, nonpartisan association of U.S. public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management of approximately \$5 trillion. CII policy 2.24 provides that the “[t]he board should be chaired by an independent director. The CEO and chair roles should only be combined in very limited circumstances; in these situations, the board should provide a written statement in the proxy materials discussing why the combined role is in the best interests of shareowners, and it should name a lead independent director who should have approval over information flow to the board, meeting agendas and meeting schedules to ensure a structure that provides an appropriate balance between the powers of the CEO and those of the independent directors.” Thus, CII supports a new requirement for an independent director where the board chair is not independent. However, to the extent that HKEX has authority to do so, it may wish to consider mandating this requirement rather than requiring it on a comply-or-explain basis. As noted by HKEX, without a designated lead independent director, shareholders may have difficulty reaching the board, which is supposed to be their representative. CII policy 2.6 provides that “[d]irectors should respond to communications from shareowners and should seek shareowner views on important governance, management and performance matters. To accomplish this goal, all companies should establish board-shareowner communications policies. Such policies should disclose the ground rules by which directors will meet with shareowners. The policies should also include postal mail and email contact information for at least one independent director (but preferably for the independent board chair and/or the independent lead director and the independent chairs of the audit, compensation and nominating committees). Companies should also establish mechanisms by which shareowners with non-trivial concerns can communicate directly with all directors. Policies requiring that all director communication go through a member of the management team should be avoided unless they are for record-keeping purposes. In such cases, procedures documenting receipt and delivery of the request to the board and its response must be maintained and made available to shareowners upon request. Directors should have access to all communications. Boards should determine

whether outside counsel should be present at meetings with shareowners to monitor compliance with disclosure rules. All directors should attend the annual shareowners' meetings and be available, when requested by the chair, to answer shareowner questions." In addition, where the board chair and CEO roles are held by the same person, HKEX should consider requiring a written statement in proxy materials (HKEX may refer to this as the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting) explaining why combining the roles is in the best interest of shareholders, especially given the prevalence of the combined role in this market. HKEX should also consider clarifying additional roles for the lead independent director other than just being a designated point of contact. CII policy provides: "[o]ther roles of the lead independent director should include chairing meetings of non-management directors and of independent directors, presiding over board meetings in the absence of the chair, serving as the principle liaison between the independent directors and the chair and leading the board/director evaluation process. Given these additional responsibilities, the lead independent director should expect to devote a greater amount of time to board service than the other directors." These additional roles are more likely to help a lead independent director mitigate the fundamental conflict that comes with a combined board chair/CEO in a way that identifying a lead independent director as a point of contact would not. "Reasoned explanations" for why the company believes that it has some alternative to naming a lead independent director are unlikely to accomplish the same outcome. While HKEX highlights the role of other independent directors in addition to the lead independent director, HKEX may wish to consider if investors and HKEX receive enough information currently to assess who is an independent director. CII policy provides that "[a]n independent director is someone whose only nontrivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer is his or her directorship. Stated most simply, an independent director is a person whose directorship constitutes his or her only connection to the corporation."

## Question 2(a)

Regarding continuous professional development for directors, do you agree with our proposal to make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours?

☐ Yes

☒ **No**

Please provide reasons for your views.

While CII supports continuous professional development for existing directors and initial education for new directors, we don't believe making the practice mandatory is the best approach. Requiring training for existing directors and specifying a minimum number of training hours for new directors risks making the practice a perfunctory, check-the-box exercise. HKEX may consider requiring that at least the training on fiduciary responsibilities and liabilities should be external rather than internal. CII policy 2.12a provides that "[d]irectors should receive training from independent sources on their fiduciary responsibilities and liabilities. Directors have an affirmative obligation to become and remain independently familiar with company operations; they should not rely exclusively on information provided to them by the CEO to do their jobs. Directors should be provided meaningful information in a timely manner prior to board meetings and should be allowed reasonable access to management to discuss board issues."

## Question 2(b)

Regarding continuous professional development for directors, do you agree with our proposal to require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment?

☐ Yes

☒ **No**

Please provide reasons for your views.

Please see response to 2(a)

## **Question 2(c)**

Regarding continuous professional development for directors, do you agree with our proposal to define “First-time Directors” to mean directors who (i) are appointed as a director of an issuer listed on the Exchange for the first time; or (ii) have not served as a director of an issuer listed on the Exchange for a period of three years or more prior to their appointment?

☐ Yes

☒ **No**

Please provide reasons for your views.

Please see response to 2(a)

## **Question 2(d)**

Regarding continuous professional development for directors, do you agree with our proposal to specify the specific topics that must be covered under the continuous professional development requirement?

☐ Yes

☒ **No**

Please provide reasons for your views.

Please see response to 2(a)

### **Question 3**

Do you agree with the proposed consequential changes to Principle C.1 and CP C.1.1 of the CG Code?

☐ Yes

☒ **No**

Please provide reasons for your views.

Please see response to question 2(a).

### **Question 4**



Do you agree with our proposal to upgrade the current Recommended Best Practice (RBP) in the CG Code to a CP requiring issuers to conduct regular board performance reviews at least every two years and make disclosure as set out in CP B.1.4?

☒ **Yes**

☐ No

Please provide reasons for your views.

CII policy 2.8c provides that “[b]oards should review their own performance periodically. That evaluation should include a review of the performance and qualifications of any director who received “against” votes from a significant number of shareowners or for whom a significant number of shareowners withheld votes.” Thus, CII is supportive of HKEX’s proposal, with two suggestions: 1. board performance reviews should include a focus on individual board member performance when that there are significant number of “against” votes or votes withheld for a particular director, and 2. Such assessment should consider “whether directors feel they have sufficient information to make well-informed decisions and reasonable access to management on matters relevant to shareowner value” (CII policy 2.12a).

## Question 5

Do you agree with our proposal to introduce a new CP requiring issuers to maintain a board skills matrix and make disclosure set out in CP B.1.5?

☒ **Yes**

☐ No

Please provide reasons for your views.

CII policy 2.8 provides that “[n]ominating committees should monitor board composition for the distribution of skillsets, backgrounds and tenure on the board, and heed the results of board evaluations to ensure the board equips itself with competencies and experiences that will further the company's strategic goals.”

## Question 6(a)

In relation to our proposal to introduce a “hard cap” of six listed issuer directorships that INEDs may hold, do you agree with the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers?

☒ Yes

☐ No

Please provide reasons for your views.

CII policy 2.11 provides that “[a]bsent unusual, specified circumstances, CII recommends limiting for-profit, corporate board service as follows: Directors who are employed full-time by a for-profit corporation should serve on no more than two total for-profit boards. All other directors should serve on no more than four total for-profit boards. Companies should disclose all board members’ for-profit, corporate directorships.” Therefore, we support establishing a policy that provides that directors should serve on no more than four six directorships.

## Question 6(b)

In relation to our proposal to introduce a “hard cap” of six listed issuer directorships that INEDs may hold, do you agree with the proposed three-year transition period to implement the hard cap?

☒ **Yes**

☐ No

Please provide reasons for your views.

CII policy does not take a position on a particular transition period but providing a transition period is reasonable.

## Question 7

Do you agree with the proposal to introduce a new Mandatory Disclosure Requirement (MDR) in the CG Code to require the nomination committee to annually assess and disclose its assessment of each director’s time commitment and contribution to the board?

☒ **Yes**

☐ No

Please provide reasons for your views.

CII policy provides that “[b]oards are well positioned to evaluate the unique needs of their companies and evaluate each director’s aggregate time commitments. Nominating committees should establish and disclose their director service policies to investors.”

## Question 8(a)

In relation to our proposal to introduce a “hard cap” of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree with the proposed hard cap to strengthen board independence?

☐ Yes

☒ **No**

Please give reasons for your views.

CII policy does not provide a numerical threshold at which board tenure leads to a director no longer being independent. CII evaluates director independence in consideration of professional and personal affiliations and relationships. For more information, we would refer HKEX to CII policy 7.3 for detailed guidelines on assessing independence:  
[https://www.cii.org/corp\\_gov\\_policies](https://www.cii.org/corp_gov_policies)

## Question 8(b)

In relation to our proposal to introduce a “hard cap” of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree that a person can be re-considered as an INED of the same issuer after a two-year cooling-off period?

☐ Yes

☒ **No**

Please provide reasons for your views.

See response to question 8(a).

## Question 8(c)

In relation to our proposal to introduce a “hard cap” of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree with the proposed three-year transition period in respect of the implementation of the hard cap?

☐ Yes

☒ **No**

Please provide reasons for your views.

See response to question 8(a).

## Question 9

Do you agree with the proposal to require all issuers to disclose the length of tenure of each director in the CG Report?

☒ **Yes**

☐ No

Please provide reasons for your views.

CII policy 2.3 provides “The company should disclose information necessary for shareowners to determine whether directors qualify as independent.” Disclosure of director tenure is material to determining whether directors are independent.

## Question 10

Do you agree with our proposal to introduce a CP requiring issuers to have at least one director of a different gender on the nomination committee?

☐ Yes

☒ **No**

Please provide reasons for your views.

CII policy 2.8b states “CII supports a diverse board. CII believes a diverse board has benefits that can enhance corporate financial performance, particularly in today's global market place. Nominating committee charters, or equivalent, ought to reflect that boards should be diverse, including such considerations as background, experience, age, race, gender, ethnicity, and culture.” However, CII has not endorsed a requirement for a particular number of directors with any particular diversity identity.

## Question 11

Do you agree with our proposal to introduce a Listing Rule to require issuers to have and disclose a diversity policy for their workforce (including senior management)?

☐ Yes

☒ **No**

Please provide reasons for your views.

While CII policy 2.9 supports disclosing the essential features of CEO succession planning policies, including “processes to identify and include diverse candidates,” CII policy takes no position on disclosure of company-wide diversity policies.

## Question 12

Do you agree with our proposal to upgrade from a CP to a MDR the requirement on the annual review of the implementation of an issuer's board diversity policy?

☐ Yes

☒ **No**

Please provide reasons for your views.

Please see response to question 11.

### Question 13

Do you agree with our proposal to require as a revised MDR separate disclosure of the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management) in the CG Report?

☐ Yes

☒ **No**

Please provide reasons for your views.

CII has not adopted a policy for issuers to have and/or disclose a diversity policy.

### Question 14



Do you agree with our proposal to codify the arrangements during temporary deviations from the requirement for issuers to have directors of different genders on the board as set out in draft Main Board Listing Rule 13.92(2) in Appendix I?

☐ Yes

☒ **No**

Please provide reasons for your views.

See responses to questions 12 and 13.

## Question 15(a)

Do you agree with our proposal to emphasise in Principle D.2 the board's responsibility for the issuer's risk management and internal controls and for the (at least) annual reviews of the effectiveness of the risk management and internal control systems?

☐ Yes

☒ **No**

Please provide reasons for your views.

CII policy 2.7 provides that “[t]he board should (1) monitor a company’s risk management philosophy and risk appetite; (2) understand and ensure risk management practices for the company; (3) regularly review risks in relation to the risk appetite; and (4) evaluate how management responds to the most significant risks.” However, CII policy provides that the board should “regularly” review risk, rather than endorsing an annual review.

## Question 15(b)

Do you agree with our proposal to upgrade the requirement to conduct (at least) annual reviews of the effectiveness of the issuer's risk management and internal control systems to mandatory and require the disclosures set out in MDR paragraph H?

☐ Yes

☒ **No**

Please provide reasons for your views.

CII policy has not adopted a mandatory disclosure element for the board's risk management and internal controls.

## Question 16

Do you agree with our proposal to refine the existing CPs in section D.2 of the CG Code setting out the scope of the (at least) annual reviews of the risk management and internal control systems?

☐ Yes

☒ **No**

Please provide reasons for your views.

CII policy has not adopted a mandatory disclosure element for the board's risk management and internal controls.

## Question 17

Do you agree with our proposal to introduce a new MDR requiring specific disclosure of the issuer's policy on payment of dividends and the board's dividend decisions during the reporting period?

☒ **Yes**

☐ No

Please provide reasons for your views.

Companies should have in their agenda when a dividend will be voted on in a meeting and then an announcement of any dividend that was decided. However, we would caution that the language used in this section appears to create an assumption that dividends are usually better than other capital allocation decisions (e.g., reinvestment or stock buybacks) and should be the norm. It is not clear to us that that is the case.

## Question 18

Do you agree with our proposal to introduce a Listing Rule requirement for issuers to set a record date to determine the identity of security holders eligible to attend and vote at a general meeting or to receive entitlements?

☒ **Yes**

☐ No

Please provide reasons for your views.

CII policy 4.3b provides that to “promote the ability of shareowners to make informed decisions regarding whether to recall loaned shares: (1) shareowner meeting record dates should be disclosed as far in advance of the record date as possible, and (2) proxy statements should be disclosed six or more days before the record date where practicable.” An advanced record date with earlier disclosure of the proxy circular promotes constructive engagement that fosters better understanding of the relevant issues. In addition, establishing a record date with sufficient time prior to the general meeting allows shareholders to make an informed voting decision and to ensure their votes are accurately tabulated.

## Question 19

Do you agree with our proposal to codify our recommended disclosures in respect of issuers’ modified auditors’ opinions into the Listing Rules?

☒ **Yes**

☐ No

Please provide reasons for your views.

Modified auditors’ opinions are material to investors.

## Question 20

Do you agree with our proposal to clarify our expectation of the provision of monthly updates in CP D.1.2 and the note thereto?

☒ **Yes**

☐ No

Please provide reasons for your views.

Monthly financial updates should be provided to the board from management and if they are not provided, management should ask for them.

## Question 21

Do you agree with our proposal to align 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 as set out in draft Main Board Listing Rules 3.23, 3.27, 3.27B, 3.27C and 8A.28A in Appendix I?

☒ Yes

☐ No

Please provide reasons for your views.

If companies do not meet basic requirements for committees (e.g., there is no audit committee), this needs to be disclosed. CII policy 2.13d also provides that “[t]he proxy statement should include a copy of the audit committee charter and a statement by the audit committee that it has complied with the duties outlined in the charter.”

## Question 22

Do you agree with the proposed implementation date of financial years commencing on or after 1 January 2025, with transitional arrangements as set out in paragraphs 182 to 183 of the Consultation Paper?

☒ **Yes**

☐ No

Please provide reasons for your views.

CII does not have a position on the timing of these transitions.

**You have completed the questionnaire questions for this consultation but not yet submitted the same.**

1. You may make any amendments to your responses on this page. Please do so by navigating to the relevant questions through the panel on the left (under the ≡ icon).

2. Once you click "**Next**" at the bottom of this page, you will be taken to a preview page that summarises your responses (**Response Summary Page**) where you will be able to download a response summary in PDF format. **Please note NO further amendments to your responses can be made on the Response Summary Page.** You have to click "**Submit**" at the bottom of the Response Summary Page to submit your responses. An acknowledgement of receipt will pop up once you have successfully submitted your responses.

3. You may contact [consultationsupport@hkex.com.hk](mailto:consultationsupport@hkex.com.hk) if you have any questions. Please specify the email address, contact person and phone number you have provided in this questionnaire.



