

Hong Kong Exchanges and Clearing Limited

8th Floor, Two Exchange Square
8 Connaught Place
Central, Hong Kong

Re: BlackRock’s response to the Exchange’s consultation paper on “Review of Corporate Governance Code and Related Listing Rules”

Background

On June 14, 2024, the Stock Exchange of Hong Kong Limited (the Exchange) published a consultation paper seeking feedback on proposed changes to the Corporate Governance Code and related Listing Rules.¹ The consultation introduces provisions to enhance board independence at Hong Kong-listed companies. These include requiring the designation of a Lead independent non-executive director (INED) in instances where the board chair is not independent; limiting the number of outside board commitments a director may hold; and revising the definition of INED independence based on tenure.² With respect to enhancing board composition, the consultation also proposes setting requirements for gender diversity on boards’ nomination committees, among other measures.³

BlackRock⁴ submitted a response to the Exchange’s consultation paper on August 16, 2024. The response notes our support of the Exchange’s proposal to require the designation of a Lead INED. In our experience, boards are most effective at overseeing and advising management when there is a senior independent board leader. This is, in our view, especially important in the Hong Kong market, where the prevalence and interests of controlling shareholders at listed companies may not always align with those of minority shareholders, including long-term investors like our clients.⁵ Furthermore, in our assessment, the designation of a Lead INED may enhance engagement between companies’ boards and minority shareholders. The response also discusses our support for the other proposed measures related to board independence and composition and notes specific areas in which the proposed rules may be enhanced.

¹ Stock Exchange of Hong Kong Limited, “[Exchange Publishes Consultation Paper on Corporate Governance Code Enhancements](#),” June 14, 2024.

² Ibid.

³ Ibid.

⁴ BlackRock is a publicly traded investment management firm that provides a broad range of investment management and technology services to institutional and retail clients worldwide. The assets BlackRock manages belong to its clients which include public and private pension plans, insurers, official institutions, endowments, universities, charities, family offices, wealth managers, and, ultimately, the individual investors that they serve, many of whom are saving for retirement.

⁵ See “[Board Independence in Asia-Pacific: a stewardship perspective](#),” for more information on how BIS approaches this issue.



BlackRock submitted the following response to the Exchange’s public consultation on the “**Review of Corporate Governance Code and Related Listing Rules**”

Question 1 Do you agree with our proposal to introduce a new CP requiring issuers without an independent board chair to designate one INED as a Lead INED to enhance engagement with investors and shareholders? Please provide reasons for your views.

Yes.

We are very pleased to see the Exchange’s proposals regarding the institutionalization of the Lead independent non-executive director (INED) role, and strongly support the related provisions and expectations. As an institutional investor in Hong Kong listed issuers, access to independent board members is helpful to our understanding companies and promoting minority shareholders’ interests. This is especially so when many companies have controlling shareholders whose interests might not always align with those of minority shareholders. For example, in related party transactions there is a risk that the controlling shareholder may benefit at the expense of minority shareholders through unfair dealings. We lay out in the following paragraphs our key considerations regarding the role of the Lead INED, and hope that it could also serve as a reference for the Exchange when setting further guidance for this important role.

Why having a Lead INED is so critical, especially in Hong Kong: one feature of the Hong Kong market is the prevalence of controlling shareholders at listed companies. Given that the interests of controlling and minority shareholders may not always align, it is important for minority shareholders such as BlackRock’s clients that market regulators ensure an independent counterbalance to controlling shareholder structures. In our experience, boards are most effective at overseeing and advising management when there is a senior independent board leader. This director may chair the board, or, where the chair is not independent, be designated as a Lead INED. We believe it is important for the Hong Kong market to institutionalize the role of a Lead INED partly because we seldom see boards voluntarily having an independent chair. A Lead INED is able to strengthen communication among INEDs and between INEDs and the rest of the board, providing the independent counterbalance mentioned above. We also consider the INEDs as an independent communication channel with minority shareholders - this is especially so for those responsible for leading such communication efforts, for instance the Lead INED role under the Exchange’s proposal. Our analysis of the latest available dataset shows that Hong Kong lags the APAC region in terms of the percentage of independent board chairs, as well as Lead INEDs. (This analysis is available to the Exchange upon request). As Hong Kong companies are generally compliant regarding regulatory requirements, regulation mandating the provision of the Lead INED role is important to enhance market practice. We note that the Exchange currently proposes a “comply-or-explain” approach, and we hope that this can be a first step to encouraging more companies to adopt the Lead INED role and enhance engagement between minority investors and the board.

Shareholder communication is one of the Lead INED’s key responsibilities; though investors should be able to have access to more than one director: the Lead INED has many responsibilities (footnote 1), and one key role is to facilitate communication with shareholders, as highlighted by the Exchange. We consider it important for there to be a formal communication channel between the board and minority investors as directors are, in part, responsible for representing the interests of all shareholders. BlackRock’s stewardship efforts in Hong Kong have been challenged by the lack of access to INEDs, an issue that could be addressed by normalizing shareholder director communications, as the

BlackRock

Exchange proposes. The lead INED or another appropriate director should be available to meet with shareholders in those situations where an INED is best placed to explain and contextualize a company's approach. We do not expect INEDs, who are not full-time employees, to discuss operational issues with shareholders. As such, and without disclosing material, non-public information, we encourage INEDs to communicate with shareholders on board-level issues, including board effectiveness, the board's role in corporate strategy and sustainability, overseeing risk management, and especially issues that involve conflicts of interest such as executive remuneration and related-party transactions.

To be effective, the Lead INED's role needs to be clearly defined, have appropriate powers and specify the individual's responsibilities to all shareholders: Whether or not a Lead INED is appointed among the INEDs, shareholders benefit from their independence only when the role is defined appropriately such that they are well positioned to be effective in resolving conflicts of interest between controlling shareholders and minority shareholders. It does not serve shareholders' financial interests when INEDs are merely appointed as a token and not executing their duties, as this gives the appearance of a governance mechanism that is independent in form but not effective in protecting shareholders' interests. As such, it is important to ensure independence in the Lead INED appointment process.

Moreover, we would like to highlight the need for the Exchange to build the expectations that INEDs are accountable to non-controlling shareholders as much as they are accountable to controlling shareholders. For instance, there was a case where a Senior Independent Director, together with other INEDs of a Malaysian company, advised minority shareholders to reject a tender offer made by the controlling shareholder aimed at privatizing the company, in an effort to protect shareholders' interest (the case details are available to the Exchange upon request). One measure to enhance accountability is through disclosure. We note the Exchange has mentioned that issuers can enhance disclosure in respect of INEDs' contribution or work done during the year in the annual report (footnote 2). Investors would find it helpful if issuers similarly disclose how the Lead INEDs fulfilled their duties in the past 12 months, including but not limited to shareholder communication.

We note that the Exchange has asked issuers that do not have a designated Lead INED to provide an explanation, for example by indicating that they have in place an alternative shareholder communication channel (consultation paragraph 33). We would find it helpful if the Exchange could provide more specific guidance, as there could be a range of responses that issuers would provide. For instance, we likely would not consider investor relations professionals who would relate shareholder feedback to INEDs or the board as an effective substitute for designating a Lead INED. One example of alternative practices we observed in South Korea is that some companies voluntarily mandate an INED as a "shareholder advocate" to communicate with shareholders actively.

Adequate incentive and director insurance should be considered: We agree with the Exchange's view that the Lead INED role is "not intended to create a separate or higher level of responsibility or liability relative to other INEDs on the board". We also recognize however that this role may entail more workload and time commitment than usually required for INEDs. We support boards in ensuring INEDs are appropriately and reasonably compensated and encourage share ownership by INEDs, although noting that granting options (rather than ordinary shares) or any compensation with time-based or performance-based vesting to INEDs could misalign their incentives and impair independent oversight. We recognize that Directors and Officers (D&O) insurance can help

BlackRock®

reduce the risk and provide effective protection for INEDs to perform their duties, and encourage companies to provide sufficient disclosure on the scope and amount of D&O insurance coverage, as well as the governance mechanisms for review and approval of insurance coverage.

Footnote:

1) *In our view, the role of the designated Lead INED is to enhance the effectiveness of the independent members of the board through shaping the agenda, ensuring adequate information is provided to the board, and encouraging INED participation in board deliberations. The Lead INED also helps to strengthen the voice of INEDs as a whole, and can provide a balance to the dominant influence of controlling shareholders. Even if the company does not have a controlling shareholder, the presence of a Lead INED can help to empower other INEDs, especially when they are not majority on the board.*

2) HKEX, "Corporate Governance Guide for Board and Directors", Dec 2021
(https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Corporate-Governance-Practices/guide_board_dir.pdf)

Question 2 Regarding continuous professional development for directors, do you agree with our proposals to:

(a) Make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours?

Please provide reasons for your views.

Yes.

We agree with the Exchange's proposals to require training for first time directors as well as continuing proficiency training for all directors, as this would help to enhance directors' capabilities for the role, as well as give investors more confidence that directors have better understandings of their responsibilities and relevant knowledge.

(b) Require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment?

Please provide reasons for your views.

Yes.

Please see our response to Question 2(a).

(c) 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?

Please provide reasons for your views.

Yes.



(d) Specify the specific topics that must be covered under the continuous professional development requirement? Please provide reasons for your views.

Yes.

We do want to highlight to the Exchange the importance that directors, at least INEDs, have sufficient financial literacy, and requiring training in related fields could be one way to ensure effectiveness in this regard. With related-party transactions being common in the Hong Kong market, it is crucial for at least some INEDs to have adequate financial expertise to assess the fairness and soundness of these transactions; this ability is necessary even though external advisors might be hired to advise on the transactions, as INEDs should be able to form independent judgement.

Question 3 Do you agree with the proposed consequential changes to Principle C.1 and CP C.1.1 of the CG Code? Please provide reasons for your views.

Yes.

Question 4 Do you agree with our proposal to upgrade the current RBP 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? Please provide reasons for your views.

Yes.

We appreciate the Exchange's requirement that boards regularly review their performance. While the current proposal can serve as a good first step for issuers, we also recommend the below for the Exchange's consideration:

- Individual director performance review: In addition to the performance of the board as a whole, we would also like to see assessment of individual director performance, to encourage individual accountability. We note that the Exchange has made a similar proposal regarding each director's contribution to the board, please see our response to Question 7.
- Third-party evaluations: we believe that board performance would be more objectively evaluated if the review was facilitated by an independent third party, who can bring in market insights and objective perspectives that enhance and strengthen the evaluation process. In addition, directors are likely to be more candid with an independent third party when providing feedback. If the performance review is conducted by the company internally, the review should be led by INEDs to mitigate against potential conflicts of interest.
- Periodic reviews: if board evaluations are facilitated by an independent third party, the ideal interval should be once every three years. We recommend a more frequent review interval if evaluations are done internally, for instance, annually.
- Disclosure of key findings: it would be helpful to investors if issuers disclose the key findings and recommended actions from board evaluations, as well as steps taken (or action plans) to address the issues identified.
- Integrate findings into nomination process: We also recommend that past performance evaluations of board members, including INEDs, be effectively linked to recommendations to re-elect them, such as confirmation from the nomination committee that the findings were considered in the process to re-nominate directors for election.



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? Please provide reasons for your views.

Yes.

We support the Exchange’s proposal, and believe that regular reviews and refreshments of the board skill matrix would be an effective way to dynamically assess alignment between a company’s strategy and the board’s collective skills and experience.

In addition, sufficient information on the individual candidates can help shareholders assess the capabilities and suitability of each individual nominee and their fit within overall board composition. These disclosures should give an understanding of how the collective experience and expertise of the board, as well as the particular skill-sets of individual directors, aligns with the company’s long-term strategy and business model.

We also want to highlight the importance of having financial, accounting, and/or audit expertise on the board, and would find it helpful if disclosure on board skill matrix can include information such as which director is considered to have such expertise, and which part of their professional experience demonstrates such expertise. Listed below are some scenarios where such expertise crucially affects a company’s long-term financial performance:

- Adequate expertise on the Audit Committee: audit committees play a vital role in a company’s financial reporting system by providing independent oversight of the accounts, material financial and non-financial information, and internal control frameworks. As such, the functionality of the audit committee is best served by directors with relevant expertise and experience, such as those in accounting and audit;
- Financial expertise to oversee related party transactions: with related-party transactions being common in Asia, it is crucial for at least some INEDs to have sufficient financial expertise to assess the fairness and soundness of these transactions;
- Ensure company’s financial resilience in a new economic regime: we have learned that amid a slower growth and higher interest rate environment, companies are focused on building stronger balance sheets, increasing free cash flow generation, and improving their capacity for sustained earnings growth. The board’s role in advising and overseeing management through changes in strategies, business models or capital allocation plans is instrumental. We have heard from boards whose businesses are undergoing structural shifts that they are reviewing their composition to ensure they have the relevant skills – to acquire those aligned with new opportunities, while preserving those required to oversee the business today. (footnote 1)

Footnote:

1) For more, please refer to BlackRock’s publication “Financial Resilience in a new economic regime”, Jan 2024. (<https://www.blackrock.com/corporate/literature/publication/financial-resilience-in-new-economic-regime.pdf>)

BlackRock

Question 6 In relation to our proposal to introduce a “hard cap” of six listed issuer directorships that INEDs may hold, do you agree:

(a) With the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers?

Please provide reasons for your views.

Yes.

We agree that the number of issuer directorships an individual can take on should not be excessive to ensure sufficient capacity, and we welcome regulatory mechanisms to ensure INEDs have sufficient time and energy to effectively perform their duties. BlackRock expects companies to provide a clear explanation of the capacity to contribute in situations where a board candidate is a director serving on more than six public company boards. As the role and expectations of a director are increasingly demanding, directors must be able to commit an appropriate amount of time to board and committee matters. It is important that directors have the capacity to meet all of their responsibilities - including when there are unforeseen events – and therefore, they should not take on an excessive number of roles that would impair their ability to fulfil their duties.

While it can be argued that whether the number of directorships is excessive depends on the capability of the directors, we have observed cases where INEDs have taken on as many as 18 directorships. From an investor perspective, it may not be obvious whether even a very capable INED would have time and energy to fully fulfil their director duties to so many companies, especially in the case of unforeseen events with extensive impacts across the market. Although such examples of very excessive directorships may not be very common, we find the Exchange’s proposal is a helpful measure to prevent such extreme cases from occurring. We also note that the Exchange has referenced the regulations of other stock exchanges; alignment with best practices in other markets would give investors more confidence that Hong Kong-listed issuers have strong and fully engaged boards.

The Exchange proposes to mandate a cap of six directorships of Hong Kong listed issuers for INEDs. Currently, boards should provide an explanation if a proposed INED will be holding their seventh or more listed company directorships (CP B.3.4(b)), which are not limited to serving only on the boards of Hong Kong listed companies. While we understand that the specification “Hong Kong listed issuer directorships” might enable the Exchange to better supervise and manage INEDs’ concurrent directorships, the scope does not include directorships at listed companies outside Hong Kong, which could demand similar or more time and effort depending on board meeting frequencies or if travel is required, thus affecting an INED’s ability to perform their duties. It is not difficult to imagine a situation where directors can take on multiple directorships across markets/ jurisdictions. In fact, we have observed an instance where a director has taken on close to ten directorships at Hong Kong-listed and mainland China-listed companies, leading investors to questions whether adequate time and energy can be allocated to each.

We therefore encourage the Exchange to expand the scope of the directorship cap to beyond Hong Kong-listed issuers to mitigate against the potential scenario mentioned above. We also believe that listed companies should disclose all of the external board mandates and positions of INED candidates, so that investors can better assess each INED’s ability to properly perform their duties.

(b) With the proposed three-year transition period to implement the hard cap?

Please provide reasons for your views.

Yes.

BlackRock®

Please refer to our response to Question 22.

Question 7 Do you agree with the proposal to introduce a new MDR to require the nomination committee to annually assess and disclose its assessment of each director's time commitment and contribution to the board? Please provide reasons for your views.

Yes.

Please also see our answer to Question 4.

We note that paragraph 89 of the consultation requires “the nomination committee to annually assess and disclose its assessment... of each director’s time commitment and contribution to the board”, while in paragraph 65 the Exchange “propose[s] that the review focuses on the board’s performance as a whole, rather than assess the performance of each director individually”. We would like the Exchange to clarify how an individual director’s “contribution” is different from their “performance”. Moreover, if the need for an annual assessment of the contribution of each director is already recognized, we encourage the Exchange to consider including that as part of the board performance review.

We appreciate that the Exchange has asked the nomination committee to consider each director’s significant external time commitments, including non-listed issuer directorship roles and overseas directorships. As an investor, we would appreciate the nomination committee being required to provide more detailed or specific disclosure of such time commitments and the committee’s considerations in determining director capacity, beyond boilerplate language confirming that it is sufficient. This would help investors have an informed understanding of each director’s priorities and likely level of engagement in the board, as well as of the nomination committee’s assessments.

Question 8 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:

(a) With the proposed hard cap to strengthen board independence?

Please provide reasons for your views.

Yes.

Critical importance of periodic refreshment to ensure independence: We agree with the Exchange in that we believe shareholders are best served when there is orderly renewal of the board. This should result in directors with accumulated experience while at the same time introduce fresh minds and experience to the board as well as provide adequate succession planning. We are concerned about the independence of long-tenured INEDs, as we believe that longer serving directors may be less able to act independently as they were involved in prior decisions that may need to be revisited and have, over time, established close relationships with management, other directors and, possibly, the controlling shareholder.

While we understand that a director’s independence hinges on many other factors in addition to tenure, such as personal integrity and character, it is difficult for investors to

BlackRock®

assess these qualities of every INED with long tenure. Investors would be particularly concerned in the context of controlling-shareholder structures in Hong Kong, where controlling shareholders can chair the nomination committee and elect INEDs, who are supposed to provide a balance to the influence of the controlling shareholders. Given such concerns about the independence of the nomination process, an effective renewal process is even more important to ensure INEDs do not serve for such lengths of time that their independence may be impaired.

Regional regulatory requirements of INED tenure cap commonly range from 9-12 years; in Asia, we generally consider INEDs that have served on a board for 12 or more years as non-independent, unless local market regulation has determined a lower limit of nine years: BlackRock welcomes the Exchange's proposal to impose a hard tenure limit for INEDs, we agree that a hard tenure limit could be a useful, decisive mechanism to accelerate orderly board renewal and address the issue of long-tenured INEDs in the Hong Kong market. That said, we do not have a firm view on whether nine years would be an ideal tenure limit for INEDs – provided that there is a mix of directors with accumulated experience and new members that refresh the board's thinking to ensure that the board has directors with the most relevant skills and experience given the company's strategy and business model. We also feel that the Exchange's proposal for the issuers to retain INEDs beyond nine-year tenures on the board as non-independent directors is a useful mechanism to provide companies with some flexibility to retain capable and experienced directors, whilst still promoting board independence and succession planning.

We observe that different jurisdictions in APAC have different regulatory thresholds for defining long-tenured INEDs, ranging from six to twelve years of service on the board (footnote 1). From our perspective, and as the Exchange has noted, we may consider voting against the re-election of directors who have been on the board for a significant period of time especially if there is no evidence of board renewal. Where a company considers a director with nine or more years' service to be independent, we expect a cogent explanation justifying the independent classification. We believe INEDs who have been on the board for 12 years or longer should generally be reclassified as non-independent directors.

Tenure calculations: Regarding the Exchange's provisions for tenure calculation, we highlight two considerations:

- Tenure accrual within group companies: we note that the Exchange has proposed that, in the event of corporate restructuring, an INED's tenure would accrue to include transfers between companies within the same group as the issuer. Following this logic, such tenure accrual should cover INEDs who join a group company but have been serving as an INED of another group company before that. We recommend the Exchange consider this scenario in tenure calculation provisions, as this is a practical issue we have observed, where INEDs join a company's board as a new director while having served on another affiliated group company's board for more than 12 years. We encourage the Exchange to apply the scope as defined in Main Board Listing Rules 3.13 (7) to consider tenure accrual.
- The nine-year tenure is calculated from the date of INED appointment. As we have observed cases where non-executive directors were re-designated as INEDs without cooling-off, we are afraid this definition will exclude the time an INED may serve as a non-independent director on the board. In contrast, in paragraph 113, the Exchange requires disclosure of total length of tenure of all directors, including tenure before redesignation. So there is a chance that an INED may have been on the board for many years as a director but not required to be reclassified as non-independent. The Exchange has noted that "[w]here an INED has served on a board for an extended period of time, the INED's continued independence will be

BlackRock

increasingly at risk given their familiarity with the issuer’s management.” As such, for INEDs who have been on the board for over nine years as a director, regardless of whether they have been always independent or not, their independence should be at risk as much as INEDs who have served for the same duration only as an INED, if not more.

Footnote:

1) Mainland China requires INED tenure to be capped at six years. South Korea also requires six years as basic tenure cap, with the exception of permitting up to nine years if directors serve in another affiliated company within the same conglomerate group. Taiwan requires that starting from 2024, the term of half of the INEDs shall not exceed three terms (nine years), while all INEDs should observe the nine-year limit starting from 2027. In Singapore, a nine-year tenure limit is mandatory, effective at issuers’ annual general meetings held for the financial year ending on or after December 31, 2023. A nine-year tenure limit is also mandatory in the Philippines; companies may still retain INEDs as non-independent directors, though the board should provide meritorious justification(s) and seek shareholders’ approval during the annual shareholders’ meeting. The nine-year tenure limit is recommended in Thailand. For Malaysia, a 12-year cap became effective since June 1, 2023; all long-serving INEDs impacted by this enhancement must resign or be redesignated as non-independent directors by June 1, 2023. India has a hard tenure cap at ten years but allows incumbent INEDs with tenure longer than ten years to finish their term by 2024 as the regulatory tenure cap was revised only few years ago.

(b) That a person can be re-considered as an INED of the same issuer after a two-year cooling-off period?

Please provide reasons for your views.

No.

We note that the Exchange has provisions for a cooling off period before a former INED can resume the previous post. First, in such cases, we suggest boards provide a detailed justification for bringing back the INED, as the need to do so calls into question the board’s succession planning.

Second, we urge the Exchange to adopt a cooling off period that would be sufficient to ensure independence in the INED’s subsequent terms. Under the current proposal, an INED could hypothetically be an INED for nine years, observe two years of cooling off, then return to the board to serve as an INED for another nine years – i.e. serve as an INED for 18 years within a 20-year period. Indeed, even if the cooling off period is extended to five years or more, to what extent would an INED serving 18 out of 23 years be able to convince stakeholders that they are independent? While there is no consensus on the appropriate cooling-off period or total tenure cap, we urge the Exchange to consider such scenarios, which are not unlikely given some Hong Kong issuers have INEDs serving for decades (footnote 1).

We note that the Exchange aligns the cooling off for INEDs with that of the existing requirement of executives, directors, and professional advisors (Main Board Listing Rules 3.13). We hope the Exchange could consider the nature of different forms of affiliation, as different capacities entails degrees of affiliation and affinity with the issuer that might require different time windows to effectively cool off.

BlackRock®

Footnote:

1) While not directly comparable, the Exchange could potentially reference another regulation relating to the tenure of an independent third-party supposed to have oversight over issuers: mainland China's regulation on audit firm and signing partner tenure (continuous and cumulative), available at https://www.gov.cn/zhengce/zhengceku/2023-05/05/content_5754176.htm

(c) With the proposed three-year transition period in respect of the implementation of the hard cap?

Please provide reasons for your views.

Yes.

Please refer to our response to Question 22.

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? Please provide reasons for your views.

Yes.

This is essential to supporting the Exchange's purpose in implementing a tenure cap, and would enable effective assessment and oversight by investors. Please also see our response to Question 8.

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? Please provide reasons for your views.

Yes.

In our experience, greater diversity in the board room can contribute to more robust discussions and more innovative and resilient decisions. Over time, it can also promote greater diversity and resilience in the leadership team, and the workforce more broadly. That diversity can enable companies to develop businesses that better address the needs of the customers and communities they serve.

We generally would not consider single gender boards to be diverse, and we look to companies to have at least one female board director. After December 31, 2024, when the transitional period for Hong Kong-listed companies to appoint at least one female director ends (Main Board Listing Rules 13.92), we believe shareholders would benefit from companies' continued effort to further enhance gender diversity on the board. We encourage companies to review their gender diversity policy on an annual basis, and disclose the numerical targets and timelines, as well as the progress on achieving the measurable objectives over time.

BlackRock®

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)? Please provide reasons for your views.

Yes.

This information helps investors understand the company's objectives in its diversity efforts as well as any challenges it may face in achieving them.

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? Please provide reasons for your views.

Yes.

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? Please provide reasons for your views.

Yes.

In addition to disclosing the ratios, we propose that the Exchange also require issuers to disclose its diversity objectives, as well as any challenges it faces in achieving them. This provides more information and context for investors to better understand issuers' goals and progress.

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 MB Rule 13.92(2) in Appendix I? Please provide reasons for your views.

Yes.

Question 15 Do you agree with our proposal to: (a) 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? Please provide reasons for your views.

Yes.

We believe that companies should have an established process for identifying, monitoring, and managing key risks. Given the prevalence of the controlling shareholder structure in Hong Kong, the review process should be independent, and best done by the audit or risk committee. INEDs should have ready access to relevant management information and outside advice, as appropriate, to ensure they can properly oversee risk management.

BlackRock®

The importance of an independent review process can be illustrated with a range of cases, from misappropriation and channeling of a company's funds to a separate entity affiliated with the controlling shareholder, to more extreme cases where inadequate internal controls led to accounting fraud and even company liquidations. While a more independent risk management process may not necessarily prevent such occurrences, it could mitigate the risk of unfettered actions on the part of a controlling shareholder.

(b) 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?

Please provide reasons for your views.

Yes.

We agree with the Exchange that comprehensive disclosure provides investors with a sense of the company's long-term operational risk management practices and, more broadly, the quality of the board's oversight. In the absence of robust disclosures, we may reasonably conclude that companies are not adequately managing risk.

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? Please provide reasons for your views.

Yes.

Please see our response to Question 15.

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? Please provide reasons for your views.

Yes.

While, as the Exchange noted, dividend payment is at the company's discretion, it is a key mechanism of shareholder return, and as such, robust disclosure of a company's deliberations and decisions around dividend payments, in particular, and capital management, in general, can help shareholders assess the effectiveness of the board's oversight of management and whether investors' economic interests have been protected.

Therefore, rather than disclosing just dividend policy, we would encourage the Exchange to consider asking companies to disclose their shareholder return plan, which includes other factors that affect total shareholder return such as share buybacks.

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? Please provide reasons for your views.

Yes.

BlackRock®

We support the Exchange's mandating issuers to set a record date, and agree with the Exchange that it is in the interests of shareholders to have a short interval between the record date and meeting date. We would like the Exchange to further clarify to which types of corporate action events it envisages applying the requirement for issuers to set a record date.

For proxy voting, one aspect to highlight is the considerations relating to securities lending. While the majority of shareholder meetings deal with routine business, there are instances where shareholder votes may have a significant impact on shareholder value and a company's future. Examples of these include related party transactions where the controlling shareholder refrains from voting, M&A activities or related capital allocation, proxy contest, extraordinary capital raising, and so on.

When so authorized by clients, BlackRock acts as a securities lending agent on their behalf. BlackRock cannot vote shares on loan and may determine to recall them for voting, as guided by our fiduciary responsibility to act in our clients' financial interests. In almost all instances, BlackRock anticipates that the potential long-term financial value of voting shares to clients would be less than the potential revenue the loan may provide. However, in certain instances, BlackRock may determine, in our independent business judgment as a fiduciary, that the value of voting outweighs the securities lending revenue loss to clients and would therefore recall shares to be voted in those instances (footnote 1).

In these situations, the investor's ability to exercise voting rights across the full equity exposure (including through recalling those shares that have been lent out) becomes critical to protect the interests of shareholders such as BlackRock's clients. Recalling securities on loan can be impacted by the timing of record dates (footnote 2), and may need days prior to the record date to process. In practice, the longer the lead time to recalling share before the record date, the better it would be from a share recall processing perspective. As such, while we note that the Exchange has mentioned that it would not propose to specify the timing of the record date in the Listing Rules, we would still recommend the Exchange to consider doing so, as it would be helpful to investors like BlackRock to manage the necessary processes around share recalls.

Footnote:

1) For more on securities lending, please see BlackRock Investment Stewardship's Global Principles, pg 18. (<https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-engprinciples-global.pdf>)

2) In the U.S., for example, the record date of a shareholder meeting typically falls before the proxy statements are released. Accordingly, it is not practicable to evaluate a proxy statement, determine that a vote has a material impact on a fund and recall any shares on loan in advance of the record date for the annual meeting. As a result, managers must weigh independent business judgement as a fiduciary, the benefit to a fund's shareholders of recalling loaned shares in advance of an estimated record date without knowing whether there will be a vote on matters which have a material impact on the fund (thereby forgoing potential securities lending revenue for the fund's shareholders) or leaving shares on loan to potentially earn revenue for the fund (thereby forgoing the opportunity to vote).

BlackRock®

Question 19 Do you agree with our proposal to codify our recommended disclosures in respect of issuers' modified auditors' opinions into the Listing Rules? Please provide reasons for your views.

Yes.

We support the Exchange's proposal to codify recommended disclosures in respect of issuers' modified auditors' opinions into the Listing Rules, as it would permit investors to make more well-informed decisions enabled by greater transparency of critical financial information. We also agree that disclosure should include audit committee responsibilities and oversight.

In most jurisdictions, shareholders have a right to material and timely information on the financial performance and viability of the companies in which they invest. BlackRock recognizes the critical importance of financial statements, which should provide a true and fair picture of a company's financial condition. The accuracy of financial statements, inclusive of financial and non-financial information as required or permitted under market-specific accounting rules, is of paramount importance to BlackRock.

We take particular note of unexplained changes in reporting methodology, cases involving significant financial restatements, or ad hoc notifications of material financial weakness. In this respect, audit committees should provide timely disclosure on the remediation of Key and Critical Audit Matters identified either by the external auditor or internal audit function. If significant concerns about issues such as the integrity of the financial statements are identified, where no explanation is provided, BlackRock may consider voting against the re-election of members on the audit committee. Further, where there is evidence showing failure of the audit committee relating to the preparation of financial statements, fraud and general accountability to shareholders, we will consider voting against the re-election of members of the audit committee.

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? Please provide reasons for your views.

Yes.

Directors need to be sufficiently empowered to discharge their duties, and can be more effective when empowered by easy access to relevant information and outside advice, as appropriate, to ensure they can properly advise and oversee management. Clarifying the expectations regarding monthly updates can help to institutionalize the information sharing process between management and the board, as well as elucidate the responsibilities of both parties.

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? Please provide reasons for your views.

Yes.

We agree with the proposal to ensure consistency across the three mandatory committees.

BlackRock®

We would like to further emphasize that the nomination committee should have an independent chair, in alignment with the requirement for audit and remuneration committees. This is especially critical for companies with a controlling shareholder, who could sway the nomination and election of INEDs. There is an inherent potential conflict when controlling shareholders are able to vote on the election of INEDs, whose role is to counter the influence of such shareholders. In our experience, allowing the board chair to also head the nomination committee essentially gives non-independent chairmen stronger control over board succession and undermines independence in the process. For INEDs to be more likely to be independent from the controlling shareholder, we find it useful if the nomination process is independent from management and controlling shareholders. We find effective nomination committees to be constituted and chaired by directors who are seen to be genuinely independent. This provides credibility that the nomination committee is bringing genuinely independent directors to the board.

Question 22 Do you agree with the proposed implementation date of financial years commencing on or after 1 January 2025, with transitional arrangements 151 as set out in paragraphs 182 to 183 of the Consultation Paper? Please provide reasons for your views.

Yes.

We align with the Exchange's intention of providing transitional arrangements to ensure orderly adoption of the proposed rules and succession planning by issuers, especially regarding proposals that affect board composition such as the phasing out of long-tenured and over-boarded INEDs, as a furtherance to the Exchange's current approach such as requiring a new INED to be appointed if all INEDs on board are Long Serving INEDs (footnote 1). We view clear succession planning and orderly renewal as integral aspects to a strong board, and would like to share a few more observations for the Exchange's reference regarding how to best achieve this outcome.

While we believe sufficient time should be allowed for issuers to conduct a search for suitable director candidates and ensure a smooth handover at the board, we are concerned that there might be a risk that issuers will wait until close to the transitional period expiration to implement regulatory requirements. This could result in INEDs stepping down around the same time, which would not only be disruptive to the issuer's own operations, but also might result in difficulties for issuers to search for and nominate new candidates, if many issuers act in the same way. Such scenarios would not be aligned with the Exchange's intention of giving a three-year transitional period to enable an orderly phasing out of over-boarded INEDs, nor would it be helpful in the case of phasing out of long-tenured INEDs.

Given the above, we propose a few measures that could help to mitigate such risks:

- Consider implementing milestones within the transition period, such as companies' long-tenured or over-boarded INEDs should not exceed half of all INEDs by 2026 (mid-point of the transition period) (footnote 2).
- Consider starting a gradual phasing-out at every AGM during the transition period, ensuring that long-tenured or over-boarded INEDs would retire when they are subject to retirement by rotation, rather than congregating refreshment all around the end of the transition period.
- Consider disclosing a list of all companies who have (or have not) completed the transition, to provide more transparency to companies' stakeholders regarding their

BlackRock®

progress, as well as provide visibility to issuers regarding market progress so that issuers would be able to self-benchmark and adjust progress accordingly.

We would be glad to have ongoing engagements with the Exchange before and throughout the transition period to ensure that issuers experience smooth transitions, and to share our observations of the market, where relevant.

Footnote:

1) HKEX, “Exchange Publishes Conclusions on Review of Corporate Governance Code”, Dec 2021 (https://www.hkex.com.hk/News/Regulatory-Announcements/2021/211210news?sc_lang=en)

2) This references the Taiwan market practice, where the Financial Supervisory Commission proposes that starting from 2024 AGMs, half of re-elected INEDs cannot exceed three terms (“上市公司自 113 年起按董事會屆期改選時，其半數以上獨立董事連續任期不得逾 3 屆”). (<https://www.ey.gov.tw/File/192FA74F9947BB62>)

[This response was submitted online and did not require signatures of respondents.]