Amendments to Corporate Governance Code and Related Listing Rules with effect from 1 January 2022

31 December 2021

In brief

On 10 December 2021, The Stock Exchange of Hong Kong Limited ("Exchange") published Conclusions on Review of Corporate Governance Code ("CG Code") set out in Appendix 14 ("Appendix 14") to the Rules Governing the Listing of Securities on the Exchange ("Listing Rules") and the related Listing Rules. The amended CG Code and Listing Rules will come into effect on 1 January 2022, and the requirements under the new CG Code will be applicable to Corporate Governance report ("CG Report") for financial year commencing on or after 1 January 2022, save for certain exceptions as detailed in the table below.

Under the amended CG Code and Listing Rules which aim at enhancing corporate governance standards and practices, Hong Kong listed issuers will be subject to new requirements in areas of corporate culture, director independence and refreshment, diversity, nomination committee, communications with shareholders and Environmental, Social and Governance ("ESG") reporting.

Background

In April 2021, the Exchange published a "Consultation Paper on Review of CG Code and Related Listing Rules" ("Consultation Paper"). With an emphasis on instilling changes to the mindset of a listed issuer’s board and strengthening corporate governance practices amongst listed issuers, the proposals seek to enhance the corporate governance framework of the Exchange and promote the long-term success of Hong Kong listed issuers.

The Exchange received positive responses from a wide range of respondents, including listed issuers, professional bodies and industry associations, market practitioners, investment managers, non-governmental organisations, and individuals. In general, respondents welcomed the proposals to promote and enhance board independence and gender diversity in the boardroom. Under careful consideration of the feedback from respondents, the Exchange confirms that it will adopt most of the consultation proposals, with certain modifications or clarifications as set out in the consultation conclusions.
In detail

Listed issuers should be aware of the following amendments and take necessary actions to comply with the amended CG Code and Listing Rules:

A. Corporate Governance

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<tr>
<th>Area of focus</th>
<th>Major amendments</th>
<th>Implementation timeline</th>
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<tr>
<td>Corporate culture</td>
<td>(1) New Code Provision (&quot;CP&quot;) A.1.1 – To require an issuer’s board to align the company’s culture with its purpose, values and strategy.</td>
<td>Financial year commencing on or after 1 January 2022</td>
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<td>(2) New CP D.2.7 – To require the establishment of anti-corruption policy.</td>
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<td>(3) Upgrading Recommended Best Practice (&quot;RBP&quot;) to CP D.2.6 – To require the establishment of a whistleblowing policy.</td>
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<td>Board independence and refreshment</td>
<td>(1) New CP B.1.4 – 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.</td>
<td>Financial year commencing on or after 1 January 2022</td>
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<td>(2) Revised CP B.2.3 – To require additional disclosure in the papers to shareholders accompanying the resolution for the further appointment of an independent non-executive director (&quot;INED&quot;) serving more than nine years (&quot;Long Serving INED&quot;) stating the factors considered, the process and the discussion of the board (or nomination committee) in arriving at the determination that such Long Serving INED is still independent and should be re-elected.</td>
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<td>(3) New CP B.2.4 – To require an issuer whose INEDs are all Long Serving INEDs to:</td>
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<td>(a) appoint a new INED at the forthcoming annual general meeting; and</td>
<td>For (a) – Financial year commencing on or after 1 January 2023</td>
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<td>(b) disclose the length of tenure of each Long Serving INED on a named basis in the papers to shareholders for the annual general meeting.</td>
<td>For (b) – Financial year commencing on or after 1 January 2022</td>
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<td>(4) New RBP E.1.9 – An issuer generally should not grant equity-based remuneration (e.g. share options or grants) with performance-related elements to INEDs.</td>
<td>Financial year commencing on or after 1 January 2022</td>
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**Diversity**

(1) Revised Main Board Listing Rule 13.92 (GEM Listing Rule 17.104) – The Exchange will not consider diversity to be achieved by a single gender board.

*Transitional arrangements*
- For existing listed issuers with a single gender board, at least a director of a different gender must be appointed on the board no later than 31 December 2024.
- For issuers with commitment in listing document, a director of a different gender must be appointed in accordance with such commitment.
- For IPO applicants, at least a director of a different gender must be identified for A1 submission filed on or after 1 July 2022.

(2) New Mandatory Disclosure Requirement (MDR) (paragraph J) – To require all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at the board level. For the workforce, issuers will have to disclose and explain (i) the gender ratio in the workforce (including senior management), (ii) any plans or measurable objectives the issuer has set for achieving gender diversity and (iii) any mitigating factors or circumstances which make achieving gender diversity across the workforce (including senior management) more challenging or less relevant.

(3) New CP B.1.3 – To require the board to review the implementation and effectiveness of its board diversity policy on an annual basis.

(4) Directors’ Undertaking Forms will be amended to require directors providing gender information upon appointment.

**Nomination committee**

Upgrading CP to Main Board Listing Rule 3.27A (GEM Listing Rule 5.36A) – To require the establishment of a nomination committee chaired by the chairman of the board or an INED and comprising a majority of INEDs.

**Communications with shareholders**

Upgrading CP to MDR (paragraph L) – To require an issuer to disclose its shareholder communication policy and review the effectiveness of the policy on an annual basis.

**Other enhancements**

(1) New Main Board Listing Rule 13.39(5A) (GEM Listing Rule 17.47(5A)) – To require the disclosure of directors’ attendance at general meetings in the poll results announcements.

(2) Deletion of CP A.4.1 on appointment of non-executive directors for a specific term.

**B. ESG reporting**

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<td><strong>Linkage between Corporate Governance (&quot;CG&quot;) and ESG</strong></td>
<td>New introductory paragraph in the CG Code and revised Principle D.2 and CP D.2.2 and CP D.2.3 – 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)</td>
<td>1 January 2022</td>
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including ESG risks in the context of risk management under the CG Code.

| Timing of publication of ESG reports | Revised Main Board Listing Rule 13.91(5)(d) (GEM Listing Rule 17.103(5)(d)) and ESG Guide (paragraph 4(2)(d)) – To require publication of ESG reports at the same time as annual reports. | Financial year commencing on or after 1 January 2022 |

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

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<td>Re-naming Appendix 14</td>
<td>Appendix 14 will be renamed as “Corporate Governance Code” from the current name of “Corporate Governance Code and Corporate Governance Report”.</td>
<td>1 January 2022</td>
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| Re-arranging the structure of Appendix 14 | To re-arrange the structure of Appendix 14 by:  
  - amending the introductory paragraphs to reflect the CG reporting framework;  
  - moving the MDRs upfront in Appendix 14; and  
  - re-organising the provisions by topics.  
You may refer to the reference table in Appendix III to the consultation conclusions which sets out the structure of the current Appendix 14 and re-arranged Appendix 14. | 1 January 2022 |

For more details, please refer to the links below for:

- the relevant announcement of the Exchange published on 10 December 2021:  

- the consultation conclusions published on 10 December 2021:  
Let's talk

For a deeper discussion of how this impacts your business, please contact:

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