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TECH NEWS

Amendments to the Corporate Governance Code and Related Listing Rules, Effective 1 January 2019

On 27 July 2018, Hong Kong Exchanges and Clearing Limited (“HKEX”) published its consultation conclusions on “Review of the Corporate Governance Code and related Listing Rules” (the “Consultation Conclusions”), the relevant amendments to the Corporate Governance Code and Corporate Governance Report (the “Code”) set out in Appendix 14 and Appendix 15 to the Main Board (“MB”) and GEM Listing Rules (the “LRs”) respectively, and the related MB and GEM LRs (the “Rule and Code Amendments”).

The Rule and Code Amendments will take effect on 1 January 2019.

HKEX also published “Guidance for Boards and Directors” (the “Guidance”) (*Note*) to help directors carry out their role effectively. The Guidance provides practical advice to the board and directors of issuers, which advice is fully cross-referenced to the relevant LRs and corporate governance principles, provisions and practices in the Code. In certain cases, the Guidance sets out expectations placed on directors.

The following presents a summary of the major Rule and Code Amendments and certain likely actions required of listed issuers.

Summary of Major Rule and Code Amendments		Remarks / Likely Actions Required of Issuers
Relating to the independence of Independent Non-executive Directors (“INEDs”)		
MB LR 3.13(3) / GEM LR 5.09(3) <i>(LR Amendment)</i>	Extending the cooling off period from 1 year to 2 years, for appointing an INED who has been a director, partner, principal or an employee of a professional adviser providing services to the issuer. <i>(Currently, the cooling off period is 1 year.)</i>	<ul style="list-style-type: none"> • MB LR 3.13 / GEM LR 5.09 sets out the list of factors, as amended, for assessing the independence of INEDs. • Further guidance from HKEX is required as to whether and how the amendments in the factors for assessing INEDs’ independence will apply to existing INEDs, with effect from 1 January 2019. • Where applicable, existing INEDs would have to identify if any of his / her immediate family members has connections with the issuer in order to ascertain whether the independence requirements are met.
MB LR 3.13(4) / GEM LR 5.09(4) <i>(LR Amendment)</i>	Introducing 1-year cooling off period, for appointing an INED who has had material interests in the principal business activities of the issuer. <i>(Currently, NO cooling off period.)</i>	
Note 2 to MB LR 3.13 / Note 2 to GEM LR 5.09 <i>(New note to LR)</i>	Adding in a new note to the relevant LR the inclusion of an INED’s immediate family members in assessing the independence of the INED. “Immediate family members” (as defined in MB LR 14A.12(1)(a) / GEM LR 20.10(1)(a)) include INED’s spouse; and child or step-child, natural or adopted, under 18 years old, of INED and spouse.	
Code Provision (“CP”) C.3.2 in the Code <i>(CP Amendment)</i>	Extending the cooling off period from 1 year to 2 years, for appointing a former partner of the issuer’s audit firm as an audit committee (“AC”) member. <i>(Currently, the cooling off period is 1 year.)</i>	<ul style="list-style-type: none"> • Where the terms of reference (“TOR”) of the AC include this provision, amendments to the TOR would be required. • Where amendments to the AC’s TOR are made, the updated TOR is required to be posted on the HKEX and issuer’s websites.
Recommended Best Practice (“RBP”) A.3.3 in the Code <i>(New RBP)</i>	Encouraging the board to state the reasons for determining that a proposed INED is independent, notwithstanding that he / she holds cross-directorships or has significant links with other directors through involvement in other companies or bodies.	<ul style="list-style-type: none"> • RBP is subject to voluntary disclosure by issuers.

Summary of Major Rule and Code Amendments		Remarks / Likely Actions Required of Issuers
Relating to the time commitment and contribution, etc., of INEDs		
<p>CP A.2.7 in the Code</p> <p><i>(CP Amendment)</i></p>	<p>Requirement for the chairman to, at least annually, hold meetings with INEDs without the presence of other directors.</p> <p><i>(Currently, the chairman is required to hold meetings with non-executive directors (including INEDs) without the presence of executive directors.)</i></p>	<ul style="list-style-type: none"> • Arrangements to set up such meeting between the chairman and INEDs only would be necessary.
<p>CP A.5.5 in the Code</p> <p><i>(CP Amendment)</i></p>	<p>Requirement for disclosure of additional information in the circular to shareholders regarding the resolution to elect an INED, apart from the reasons why the board believes such person to be independent.</p> <p>Such additional information includes the following:</p> <ol style="list-style-type: none"> 1. the process used to identify the person; 2. the perspectives, skills and experience that the person can bring to the board; 3. how the person would contribute to the diversity of the board; and 4. where the proposed INED is holding 7 (or more) listed company directorships, why the board considers such person to be able to devote sufficient time to the board. <p><i>(Currently, only the reasons why the board believes the person for election to be independent are required to be included in the circular.)</i></p>	<ul style="list-style-type: none"> • Where any INED holds multiple directorships, arrangements would be necessary to ensure that such INED would be able to devote sufficient time to the issuer's affairs such as attending the meetings of the board and its committee(s). • The Guidance sets out certain factors that can affect an INED's time commitment to the issuer, which the nomination committee ("NC") or the board should be aware of.
Relating to other corporate governance policies and measures		
<p>MB LR 13.92 / GEM LR 17.104</p> <p><i>(Upgrading CP A.5.6 to New LR)</i></p>	<p>Requirement for NC (or the board) of an issuer to have a board diversity policy and to disclose such policy or a summary of it in the issuer's corporate governance report.</p> <p><i>(Currently, this is a CP subject to "comply or explain" requirement.)</i></p>	<ul style="list-style-type: none"> • Issuers would have to adopt a board diversity policy or to review and modify their existing policy, as applicable. • The Guidance sets out suggestions for issuers in formulating a board diversity policy.

Summary of Major Rule and Code Amendments		Remarks / Likely Actions Required of Issuers
Relating to other corporate governance policies and measures (cont'd)		
CP E.1.5 in the Code <i>(New CP)</i>	Requirement for issuers to have a dividend policy and to disclose such in their annual report.	<ul style="list-style-type: none"> Where an issuer does not have a dividend policy, it should consider formulating such policy.
Mandatory Disclosure Requirement ("MDR") L.(d)(ii) in the Code <i>(MDR Amendment)</i>	<p>Requirement for disclosure of the policy for nomination of directors (including the nomination procedures and criteria for selection and recommendation of candidates for directorship, and the diversity policy) in the summary of work performed by the NC (or the board if there is no NC) in the issuer's corporate governance report.</p> <p><i>(Currently, disclosures in the NC's summary of work include determining the policy for nomination of directors and where a diversity policy has been adopted, such diversity policy or a summary of it.)</i></p>	<ul style="list-style-type: none"> Information under MDRs must be disclosed in the corporate governance report of issuers. Issuers would have to adopt a nomination policy or to review and modify their existing nomination policy and/or procedures, as applicable. The Guidance sets out suggestions for issuers in formulating a nomination policy. Where nomination procedures and/or a diversity policy are currently incorporated in the TOR of NC, review and/or update of the TOR may be required. Where amendments to NC's TOR are made, the updated TOR is required to be posted on the HKEX and issuer's websites.

Note:

The Guidance covers the following areas:

- Directors' duties and board effectiveness
- Board committees' role and functions
- Board diversity and policy
- Risk management and internal control
- Company secretary
- Corporate governance of weighted voting rights ("WVR") issuers

As set out in the Guidance, the Guidance does not form a part of the LRs, nor do they amend or vary any LR requirements, or absolve issuers and/or their directors of any obligations to make their own judgment.



This TechNews is not exhaustive and only highlights the major Rule and Code Amendments. Please refer to HKEX's press release "Exchange Publishes CG Code Consultation Conclusions and Guidance for Boards and Directors", the Consultation Conclusions, the relevant Rule and Code Amendments and the Guidance on the HKEX website.

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