



CHKLC Opposes to

Proposed Rule Change
about **INEDs** Having
Served for Nine Years

商會**反對**關於**在任九年**之
獨董之**修訂建議**

In April 2021, HKEX published a consultation paper entitled “Review of Corporate Governance Code and Related Rules”. According to the consultation paper, the proposed rule changes aim to highlight the importance of corporate culture in alignment with vision and strategy to deliver long term sustainable performance; enhance board independence, promote board refreshment and succession planning, and strengthen the role of the nomination committee; further promote board (gender) diversity of listed issuers; improve communications with shareholders; elaborate the linkage between CG and ESG, and improve the timeliness of ESG reports by aligning the publication timeframe of ESG reports with annual reports; and improve the flow and readability of the Corporate Governance Code.

Amongst the many proposed changes, there are two areas that the FRA Committee is particularly concerned with. They relate to the re-election of Long Serving INEDs requiring independent shareholders’ approval, and the notion that diversity is not considered to be achieved by a single gender board and the introduction of a Mandatory Disclosure Requirement (MDR) requiring all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at both (a) board level and (b) across the workforce (including senior management).

The FRA Committee disagrees to both and its reasons are as follows:

Re-election of Long Serving INEDs requiring independent shareholders’ approval

- The assumption that INEDs who have served on a board for 9 years or more would lose their independence is not sound. Independence should not be defined by the length of tenure but assessed on a case-by-case basis with reference to the integrity and qualification of the individual.
- There is no empirical evidence that Long Serving INEDs are more prone to misconduct or are more likely to take sides with major shareholders to the disadvantage of minority shareholders. On the other hand, long serving independent directors can add value to a board with their in-depth understanding of the operations of the listed company and are well positioned to advise the board and protect the minority shareholders.
- The proposal violates the “One-share-one-vote” principle. All shareholders, including major and independent shareholders, should be entitled to vote on the election of directors of the board. Major shareholders should not be disenfranchised.
- Independent shareholders comprise both institutional investors and retail investors. Even INEDs elected by independent shareholders often times represent certain shareholder groups and may possess their own agenda. The result could be a highly divisive board not conducive to reaching agreement on long term strategic decisions.

2021年4月，聯交所刊發有關檢討《企業管治守則》及相關《上市規則》條文的諮詢文件。根據諮詢文件，建議的規則修訂旨在強調企業文化與願景和策略保持一致的重要性，以實現長期可持續的業績；提升董事會的獨立性，促進引入新成員及繼任規劃，及加強提名委員會的作用；進一步推動上市發行人董事會（性別）的多元化；改善與股東的溝通；闡述企業管治與環境、社會及管治（ESG）之間的聯繫，並將刊發 ESG 報告的時限與年報一致，提高 ESG 報告的及時性；以及改善《企業管治守則》的行文以便發行人參閱。

在眾多建議的修訂中，財經事務及監管政策（FRA）委員會尤其關注兩個方面。關於修訂涉及重選長期任職的獨立董事須經獨立股東批准，及只有單一性別的董事會不會被視為多元化的董事會，以及引入強制披露要求（MDR），要求所有上市發行人制定並披露可量化的目標及時間表，以在（a）董事會層面及（b）所有僱員層面（包括高級管理人員）均達到性別多元化。

FRA 委員會不同意此兩項修訂，理由如下：

重選長期任職的獨立非執行董事須經獨立股東批准

- 假設在董事會任職超過九年的獨立非執行董事會失去獨立性並不妥當。獨立性不應由任期的長短來界定，而應參照個人的誠信及資歷，逐一進行評估。
- 沒有經驗證據表明，長期任職的獨立董事更容易出現不當行為，或更有可能偏袒主要股東而對少數股東不利。另一方面，長期任職的獨立董事可憑藉其對公司營運的深入了解為董事會帶來價值，並能夠為董事會提供建議及保護少數股東。





The Chamber supports continuously raising the professional standard of INEDs in Hong Kong by providing professional training, covering listing rules and regulations, directors' duties and liabilities, board functions and management, and shareholder communication.

Diversity is not considered to be achieved by a single gender board and the introduction of a Mandatory Disclosure Requirement (MDR) requiring all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at both (a) board level and (b) across the workforce (including senior management).

- The FRA Committee supports gender diversity and agrees that female directors will bring a different dimension of thinking and angle of views, but disagrees that diversity is not achieved by a single gender board. Diversity takes many forms and gender is only one of them. A board that manifests diversity in other aspects, such as age, ethnicity, professional background and experience should not be relegated as non-diverse.
- If the proposals are implemented, existing issuers with a single gender board need to appoint at least a director of the absent gender within a three-year transition period. A set target like this might produce the undesirable result of bypassing personal experience and qualification in favour of gender. Availability of female directors also depends on the industry and sector. A longer transition period is needed in order to avoid companies outbidding each other for the service of experienced and qualified female director candidates just for compliance purpose.

- 該建議違反了「一股一票」原則。所有股東，包括主要股東及獨立股東，均應有權對董事選舉進行投票。主要股東不應被剝奪權利。
- 獨立股東既包括機構投資者，亦包括零售投資者。即使是由獨立股東選出的獨立非執行董事，多數時候亦代表特定股東群體，可能有各自的議程。結果可能是董事會高度分裂，不利於就長期策略決策達成一致。

商會支持透過提供專業培訓，不斷提高香港獨立非執行董事的專業水平，培訓內容包括上市規則及條例、董事的職責及責任、董事會職能和管理以及股東溝通。

只有單一性別的董事會不會被視為多元化的董事會，以及引入強制披露要求及規定所有上市發行人制定並披露可量化的目標及時間表，以在 (a) 董事會層面及 (b) 所有僱員層面 (包括高級管理人員) 均達到性別多元化。

- FRA委員會支持性別多元化，並同意女性董事將帶來不同的思維維度及視角，但不同意單一性別的董事會無法實現多元化。多元化有多種形式，性別只是其中之一。一個在年齡、種族、專業背景及經驗等其他方面表現出多元化的董事會，不應被歸為非多元化。

- ◆ As for setting target for workforce, the FRA Committee observes that female already enjoys workplace equality in Hong Kong, and it is not very meaningful to set a target for hiring more female. Companies which fail to achieve greater gender balance is usually limited by the nature of the industry. For example, there are more male in construction and engineering industries and more female in fashion retail and cosmetics industries. In these circumstances, setting a high target and timeline for workforce gender diversity is unrealistic.

The Chamber advocates that the appointment of directors be a fair system based on merit. To arbitrarily put up women into boards would be against the proper meritocracy system. Training and grooming of women should be the first steps.

Other consultation questions are less contentious and the FRA Committee supports them in general, as reported in the following:

- ◆ It supports aligning culture with purpose, value and strategy but more guidance is needed.
- ◆ It supports making the set-up of anti-corruption and whistleblowing policies as code provisions.
- ◆ It supports introducing a CP requiring disclosure of a policy to ensure independent views and input are available to the board, and an annual review of the implementation and effectiveness of such policy.
- ◆ It agrees to upgrading a CP to Rule requiring issuers to establish a nomination committee chaired by an INED and comprising a majority of INEDs.
- ◆ It agrees to amending the Rules and the ESG Guide to require publication of ESG reports at the same time as publication of annual reports. **M**

— Mike Wong

Chief Executive Officer
The Chamber of Hong Kong Listed Companies

- ◆ 若有關建議得以實施，現時擁有單一性別董事會的發行人需在三年過渡期內至少委任一名所缺性別的董事。此類確定目標可能產生忽視個人經驗及資格而偏重於性別的不良後果。女性董事的人數亦取決於行業及界別。為避免公司僅為合規而相互競爭以爭奪有經驗及資格的女性董事候選人，交易所便需要給予較長的過渡期。
- ◆ 對於為僱員制定目標，FRA 委員會認為，女性在香港已享有工作場所的平等地位，為僱用更多女性制定目標意義不大。未能實現性別平衡的公司通常受到行業性質的限制。例如，建築及工程行業的男性較多，而時裝零售及化妝品行業的女性較多。在此種情況下，為僱員的性別多元化制定較高目標及時間表並不現實。

商會主張，董事應擇優公平錄用。貿然將女性推上董事會有違適當的用人唯才制度。對女性的培訓和培養應是首要步驟。

其他諮詢問題爭議不大，FRA 委員會總體上支持有關問題，具體論述如下：

- ◆ 商會支持企業文化與目的、價值及策略保持一致，但需要更多指引。
- ◆ 商會支持將制定反貪污及舉報政策作為守則條文。
- ◆ 商會支持引入要求披露政策的守則條文，以確保向董事會提供獨立觀點及意見，並對有關政策的實施及有效性進行年度檢討。
- ◆ 商會同意將一項守則條文提升為《上市規則》條文，即要求發行人設立提名委員會，由獨立非執行董事擔任主席，成員須以獨立非執行董事佔大多數。
- ◆ 商會同意修訂《上市規則》及 ESG 指引，要求刊發 ESG 報告的時限與年報一致。 **M**

— 黃明偉

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總幹事