



Update on

**the Corporate  
Governance Code**  
under the Listing Rules

有關 **《上市規則》** 下  
**《企業管治守則》** 的  
**最新消息**

In April 2021, Hong Kong Stock Exchange (HKEX) issued the Consultation Paper on the Review of Corporate Governance Code and Related Listing Rules to consult the market on the proposals to update the Corporate Governance (CG) Code under the Listing Rules (LR). The proposals are intended to:

- (a) highlight the importance of corporate culture in alignment with vision and strategy to deliver long-term sustainable performance;
- (b) enhance board independence, promote refreshment and succession planning, and strengthen the role of the Nomination Committee;
- (c) further promote board (gender) diversity of listed companies;
- (d) improve communication with shareholders;
- (e) elaborate the linkage between corporate governance and environmental, social and governance (ESG) and to improve the timeliness of ESG reports by aligning the publication timeframe of ESG reports with annual reports; and
- (f) improve the flow and readability of the CG Code.

The consultation was completed in June 2021 and the Consultation Conclusions were issued in December 2021. Revised CG Code and LR are effective from 1 January 2022. This article will update our members as to key changes to the CG Code and the LR after the consultation.

## General

The CG Code is divided into two parts (Part 1 and Part 2) with an introduction. Part 1 deals with mandatory disclosure requirements and Part 2 deals with the principles of good corporate governance (Principles), code provisions (CPs) and recommended best practices (RBPs). The Principles, CPs, RBPs and “comply or explain” regime are re-drafted and re-arranged with no change of substance but with clarified language and with a reminder that a listed company will be in breach of the LR if it deviates from a CP but does not provide considered reasons and explanations in the manner set out in the CG Code. The introduction of the CG Code also provides a linkage between CG and ESG reporting in that CG provides the framework within which the boards form their decisions and build their businesses and that ESG provides a framework for listed companies to identify and consider what environmental risks and social risks may be material to them.

## Culture, Whistleblowing and Anti-Corruption Policies

On culture, under CP A.1.1, the board should establish the purpose, values and strategy of the listed company and satisfy itself that these and its culture are aligned. All directors must act with integrity, lead by example, and promote the desired culture; such culture should instil and continually reinforce across the organisation values of acting lawfully, ethically and responsibly. Under CP D.2.6, a listed company should establish a whistleblowing policy and system for employees and others to raise concerns, in confidence and anonymity, with the audit committee (or any designated committee comprising a majority of independent non-executive directors (INEDs)) about possible improprieties in any matters relating to the listed company. Under CP D.2.7, a listed company should establish policies and systems that promote and support anti-corruption laws and regulations.

2021年4月，香港交易所（港交所）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，就《上市規則》下《企業管治守則》的更新建議，諮詢市場的意見。有關建議擬：

- (a) 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；
- (b) 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；
- (c) 進一步推動上市公司董事會（性別）的多元化；
- (d) 改善與股東的溝通；
- (e) 闡述企業管治與環境、社會及管治（ESG）之間的聯繫，並透過將刊發 ESG 報告的時限與年報保持一致，以提高 ESG 報告的及時性；及
- (f) 改善《企業管治守則》的行文以更流暢易讀。

諮詢工作已於 2021 年 6 月結束，而諮詢總結亦已於 2021 年 12 月刊發。經修訂的《企業管治守則》及《上市規則》於 2022 年 1 月 1 日生效。本文將向會員闡述《企業管治守則》及《上市規則》經諮詢後的主要變化。

## 概述

《企業管治守則》分為兩部分（第一部分和第二部分）及簡介。第一部分涉及強制披露要求，第二部分涉及良好企業管治的原則（原則）、守則條文及建議最佳常規。原則、守則條文、建議最佳常規及「不遵守就解釋」機制經重新草擬及編排，並無任何實質改變，但用字則更加清晰，並提醒上市公司若偏離守則條文但未按《企業管治守則》規定的方式提供經審慎考慮的理由及解釋，則屬違反《上市規則》。《企業管治守則》簡介亦闡明企業管治與 ESG 報告之間的聯繫，企業管治制定供董事會制定決策及開展業務的框架，而 ESG 則制定供上市公司識別及考慮可能對其重要的環境風險和社會風險的框架。

## 文化、舉報及反貪污政策

在文化方面，根據守則條文第 A.1.1 條，董事會應制定上市公司的目的、價值及策略，並確保與上市公司的文化一致。所有董事行事須持正不阿、以身作則，致力推廣企業文化。該文化應向企業上下灌輸，並不斷加強「行事合乎法律、道德及責任」的理念。根據守則條文第 D.2.6 條，上市公司應制定舉報政策及系統，讓僱員及其他人可暗中及以不具名方式向審核委員會（或任何由獨立非執行董事佔大多數的指定委員會）提出其對任何可能關於上市公司的不當事宜的關注。根據守則條文第 D.2.7 條，上市公司應制定促進和支持反貪污法律及規例的政策和系統。

## 董事會獨立性

董事會獨立性方面，根據守則條文第 B.1.4 條，上市公司應制定機制，以確保董事會可獲得獨立的觀點和意見，並在其《企業管治報告》中披露該機制。董事會應每年檢討該機制的實施及有效性。根據守則條文第 B.2.4 條，若董事會內所有獨立非執行董事均在任超過九年，上市公司應：(a) 披露每名在任獨立非執



## Board Independence

On board independence, under CP B.1.4, a listed company should establish mechanisms to ensure independent views and inputs are available to the board and disclose such mechanisms in the CG Report. The board should review the implementation and effectiveness of such mechanisms on an annual basis. Under CP B.2.4, where all the INEDs have served more than nine years on the board, the listed company should (a) disclose the length of tenure of each INED on a named basis; and (b) appoint a new INED to the board at the forthcoming annual general meeting. Upon objection by our Chamber and others, HKEX has dropped

the proposal to require a long-serving INED to be appointed by independent shareholders as proposed under the Consultation Paper. Under RBP E.1.9, listed companies should not grant equity-based remuneration with performance-related elements to INEDs as this may lead to bias in their decision-making and compromise their objectivity and independence.

Under Main Board (MB) LR 3.27A, a listed company must establish a Nomination Committee chaired by the chairman of the board or an INED and comprising a majority of INEDs. The related CP under the CG Code is consequentially withdrawn.

## Diversity

On diversity, under MB LR 13.92, whilst board diversity differs according to the circumstances of each listed company and whilst diversity can be achieved through consideration of many factors, HKEX will not consider diversity to be achieved for a single gender board. Accordingly, a listed company is required to appoint at least a director of a different gender to the board by 31 December 2024. Under CP B.1.3, the board should review the implementation and effectiveness of the policy on board diversity on an annual basis. Diversity policy and its implementation are required to be mandatorily disclosed in the CG Report under item J of Part 1 of the CG Code, including disclosure and explanation on the gender ratio in the workforce, any plans to achieve gender diversity and any mitigation factors in relation thereto.



行董事的姓名及任期；及 (b) 在下次的股東周年大會上委任一名新的獨立非執行董事。在商會及其他機構的反對下，港交所已放棄諮詢文件中關於要求長期任職的獨立非執行董事由獨立股東委任的建議。根據建議最佳常規第 E.1.9 條，上市公司不應給予獨立非執行董事帶有績效表現相關元素的股本權益酬金，因為這或導致其決策偏頗並影響其客觀性和獨立性。

根據《主板上市規則》第 3.27A 條，上市公司必須設立提名委員會，由董事會主席或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。《企業管治守則》中的相關守則條文已被撤銷。

## 多元化

多元化方面，根據《主板上市規則》第 13.92 條，董事會多元化因應每間上市公司的情況而各有不同。儘管是否多元化可因應多項因素來考量，但港交所不會視成員全屬單一性別的董事會達到成員多元化。因此，上市公司須在 2024 年 12 月 31 日前委任至少一名其他性別的董事。根據守則條文第 B.1.3 條，董事會應每年檢討董事會多元化政策的實施及有效性。多元化政策及其實施須根據《企業管治守則》第一部分第 J 項在《企業管治報告》中強制披露，包括披露及解釋全體員工的性別比例、為達到性別多元化而訂立的任何計劃，及任何與此相關的緩解因素。

## Communication with Shareholders

On communication and engagement with shareholders, a listed company is required to disclose mandatorily in its CG Report its shareholders' communication policy (or a summary thereof) including channels for shareholders to communicate with the listed company and steps taken to solicit and understand the views of shareholders and stakeholders under item L of Part 1 of the CG Code with a statement as to its review on the implementation and effectiveness of such shareholders' communication policy conducted during the year (including how it arrives at the conclusion). Under MB LR 13.39(5A), a listed company must state in the poll results announcement directors' attendance at the general meeting. Under RBP F.1.2, listed companies are encouraged to include (a) details of shareholders by type and shareholding; (b) important shareholders' dates; (c) public float; and (d) shares held by each senior management in the CG Report.

## ESG Reporting

On ESG reporting, MB LR 13.91 is amended to require a listed company to publish its ESG report at the same time as the publication of its annual report if its ESG report does not form a part of its annual report.

## Miscellaneous

Similar amendments are made to the GEM LR. Detailed amendments to the MB LR and the GEM LR with changes marked up are contained in Appendices IV and V of the Consultation Conclusions respectively. The structure and arrangement of the current CG Code and re-arranged or amended CG Code are contained in Appendix III for easy reference. In addition, HKEX has also issued the Corporate Governance Guide for Boards and Directors in December 2021 to assist listed companies to comply with the new requirements. The new guide with an introduction covers (a) directors' duties and board effectiveness; (b) company culture; (c) whistleblowing and anti-corruption; (d) board committees' role and functions; (e) board diversity and policy; (f) risk management and internal control; (g) company secretary; and (h) corporate governance of weighted voting rights issuers. According to HKEX, this new guide is intended to stimulate the boards' thinking on how they can carry out their role most effectively and should be read alongside with the revised CG Code. **M**

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## 與股東的溝通

與股東的溝通及參與方面，上市公司須根據《企業管治守則》第一部分第L項在《企業管治報告》中強制披露其股東通訊政策（或政策摘要），包括股東與上市公司溝通的渠道，以及為徵求及理解股東及持份者意見而採取的步驟，並說明年內已檢討股東通訊政策的實施及有效性（包括如何得出結論）。根據《主板上市規則》第13.39(5A)條，上市公司須於投票表決結果的公告中說明董事在股東大會的出席率。根據建議最佳常規第F.1.2條，港交所鼓勵上市公司在《企業管治報告》中包括以下資料：(a) 股東類別的詳情及持股量；(b) 股東重要事項日期；(c) 公眾持股量；及(d) 每名高級管理人員的持股量。

## ESG報告

ESG報告方面，《主板上市規則》第13.91條獲修訂，規定若上市公司的ESG報告並非其年報的一部分，上市公司須在刊發其年報時，同時刊發其ESG報告。

## 雜項條文

《創業板上市規則》作出了類似修訂。《主板上市規則》及《創業板上市規則》的詳細修訂內容及標明的改動分別載於諮詢總結附錄四及附錄五。現行《企業管治守則》及經重新編排或修訂的《企業管治守則》架構及安排載於附錄三以供參考。此外，港交所亦已於2021年12月刊發《董事會及董事企業管治指引》，以協助上市公司遵守新的規定。新指引附引言，涵蓋(a) 董事職責及董事會效能；(b) 企業文化；(c) 舉報及反貪污；(d) 董事委員會角色及職能；(e) 董事會成員多元化及政策；(f) 風險管理及內部監控；(g) 公司秘書；及(h) 不同投票權架構發行人的企業管治。港交所稱，新指引旨在引發董事會思考如何最有效地發揮其作用，應與經修訂的《企業管治守則》一併閱讀。 **M**

### — 關保鈺

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