



Guidance^{for} Boards^{and} Directors

董事會及董事指引

In 1993, the code of best practice on corporate governance was issued by the Hong Kong Stock Exchange (HKEx) (with two pages and 14 paragraphs) through which the comply or explain regime was first introduced. The current corporate governance code (CG Code) and corporate governance report were introduced as Appendix 14 to the Main Board Listing Rules in 2005. Since then, the CG Code has been amended on many occasions, the latest one being the amendments relating to independence of independent non-executive directors (INED), board diversity, over-boarding of INEDs, and nomination committee and process. The amendments are effective since January 2019. As a part of the review and consultation, HKEx has also issued the Guidance for Boards and Directors (Guidance) in July 2018 to give views advice and guidance to boards and directors on the following areas:

- Directors' Duties and Board Effectiveness;
- Board Committees' Role and Functions;
- Board Diversity and Policy;
- Risk Management and Internal Control;
- Company Secretary; and
- Corporate Governance for weighted voting rights (WVR) issuers.

The Guidance however does not form part of the Listing Rules, nor does it amend or vary any Listing Rule requirements, or absolve issuers and/or their directors of any obligations to make their own judgment. Notwithstanding the qualifications as aforesaid, the Guidance does represent the good guidance and practice advocated by HKEx with which boards and directors are expected to comply. This article will discuss and summarise the various areas under the Guidance other than the corporate governance for WVR issuers.

Directors' Duties and Board Effectiveness

Generally, the board's responsibility includes:

- leading, directing and supervising the issuer's affairs to enable the long term success of the issuer;
- setting strategic objectives with focus on value creation and risk management;
- ensuring transparency;
- being accountable; and
- ensuring adequacy of resources, staff qualifications and experience.

For all directors,

- directors must act honestly and in good faith and avoid conflicts of interest and duty;
- before accepting the role, a potential director should devote time to understand the issuer so as to enable him to make value-added contributions to the board after appointment;
- there should be an induction training programme for new directors;
- directors are not expected to be experts in all matters but should nevertheless have a thorough understanding of the issues being discussed so as to enable them to contribute to discussions and discharge their responsibilities; and

1993年，香港交易所（港交所）發佈企業管治的最佳常規守則（長兩頁及14段），其中首次推出「不遵守就解釋」機制。現時的《企業管治守則》（《守則》）及《企業管治報告》於2005年加入《主板上市規則》作為附錄十四。自此，《守則》經過多次修訂，最新一次修訂是關於獨立非執行董事的獨立性、董事會成員多元化、獨立非執行董事出任多家公司董事，以及提名委員會及程序。修訂於2019年1月生效。作為檢討及諮詢的一部分，港交所亦已於2018年7月發佈《董事會及董事指引》（《指引》），就以下範疇向董事會及董事提供意見及指引：

- 董事職責及董事會效能；
- 董事委員會角色與職能；
- 董事會成員多元化及政策；
- 風險管理及內部監控；
- 公司秘書；及
- 採用不同投票權（WVR）架構的發行人的企業管治。

但是，《指引》並不構成《上市規則》的一部分，亦不修訂或更改任何《上市規則》的要求，或免除發行人及/或其董事作出任何自行判斷的責任。儘管有上述限制，《指引》確實代表港交所提倡的良好指引及常規，董事會及董事應加以遵守。本文將探討並概述《指引》下多個範疇（採取WVR架構的發行人的企業管治除外）。

董事職責及董事會效能

一般而言，董事會的職責包括：

- 引導、指引及監察發行人的事務，確保發行人長遠取得成功；
- 制定戰略目標，關注價值創造及風險管理；
- 確保透明度；
- 問責；及
- 確保資源充足，員工資歷及經驗符合要求。

對所有董事而言，

- 董事必須按誠信及真誠行事，避免利益及職責衝突；
- 在接受董事任命前，有關人士應撥出時間瞭解發行人，以便在獲任命後對董事會作出有意義的貢獻；
- 應為新董事提供入職培訓計劃；
- 董事無須是萬事通的專家，但對於討論的事宜，他們應有全面的瞭解，方可參與討論、履行董事職責；及
- 對於董事會會議上將會討論的事宜，董事有權且必須向管理層索取進一步資料/文件。若面臨紀律處分程序，董事並不能以發行人未有提供充分資料或其不理解相關交易作為辯解理由。

就執行董事而言，他們參與發行人的日常運作，應聆聽非執行董事及獨立非執行董事的意見，並與他們緊密合作。

- ◆ directors are entitled to and must seek further information/documentation from the management on matters to be discussed at board meetings. It is not a defence to claim that they do not receive adequate information or that they do not understand the relevant transactions when faced with disciplinary proceedings.

For executive directors, they are involved in the day-to-day operations and should listen to, and work closely with, NEDs and INEDs.

For NEDs and INEDs, they are expected to:

- ◆ bring an independent judgement on the issues of strategy, policy, performance, accountability, resources, key appointments and standards of conduct;
- ◆ take the lead where potential conflicts arise;
- ◆ serve on the audit, remuneration, nomination and other governance committees; and
- ◆ make effective contribution at board meetings.

On time commitment, INEDs must make sufficient time available to discharge their responsibilities and should not accept an invitation to serve as an INED unless they can devote adequate time and effort to the work involved.

Board Committees' Role and Functions

The board is responsible for performing the corporate governance duties which may be delegated to board committees. The core board committees are nomination, audit and remuneration committees.

For Nomination Committee, its key role is board recruitment and to consider succession planning. It must evaluate and assess the optimal composition of the board. There should be an established policy to identify potential directors. The selection process should be transparent and fair. The Nomination Committee should be mindful of the need to refresh the board regularly to avoid entrenchment and to attract fresh thinking.

In formulating nomination policies, issuers should consider the following guidance:

- ◆ stating the objectives of the nomination policy;
- ◆ emphasising the board's ultimate responsibility for selection and appointment of directors;
- ◆ setting out the procedure for selection, appointment and reappointment of directors;
- ◆ board succession planning considerations and periodic reviews of the plan;
- ◆ disclosure of the nomination policy and the progress made towards achieving the objectives therein set out; and



就非執行董事及獨立非執行董事而言，他們應該：

- ◆ 在涉及策略、政策、公司表現、問責性、資源、主要委任及操守準則等事宜上，提供獨立的意見；
- ◆ 在出現潛在利益衝突時發揮牽頭引導作用；
- ◆ 擔任審核、薪酬、提名及其他管治委員會成員；及
- ◆ 對董事會會議作出有效貢獻。

在時間投入方面，獨立非執行董事須投入充分時間履行職責，除非肯定自己可投入足夠的時間及精力處理有關工作，否則不應貿然接受獨立非執行董事的任命。

董事委員會角色與職能

董事會有責任履行企業管治職責，但可以將有關責任授予董事委員會。董事會轄下的核心委員會有提名、審核及薪酬委員會。

提名委員會的主要職責是招聘董事會成員及考慮繼任計劃。提名委員會須評核及評估董事會成員的最佳組合。發行人應就辨識適合擔任董事的人選制定政策。甄選過程應透明及公正。提名委員會應注意定期更新董事會成員組合的需要，避免出現個別成員長期「盤踞」的現象，並令董事會能吸引新的思維。

在制定提名政策時，發行人應考慮下列指引：

- ◆ 列明提名政策的目標；
- ◆ 強調甄選並委任董事的最終責任由全體董事承擔；

- ◆ a formal process for monitoring and reviewing the policy that it remains relevant and reflects current regulatory requirements and good corporate governance practice.

On Audit Committee, its functions are:

- ◆ to monitor the integrity of the issuer's financial statements, annual and interim reports and accounts, risk management and internal control;
- ◆ to maintain an appropriate relationship with the external auditors; and
- ◆ to ensure that the internal audit function is adequately resourced and has appropriate standing within the issuer, and to review and monitor its effectiveness.

In addition, the Audit Committee should:

- ◆ review the independence of the external auditors annually;
- ◆ monitor the management's progress on implementation of any new key financial reporting standards; and
- ◆ stay updated with tax legislature and regulatory developments in relation to financial reporting.

On Remuneration Committee, its main role is to assist and advise the board on the remuneration of the board and senior management with the aim to motivate, retain and attract the best talents for the issuer so as to maximise shareholder value. It should consider:

- ◆ salaries paid by comparable issuers, time commitment and responsibilities, employment conditions in the group;
- ◆ appointment and termination terms to ensure fairness; and
- ◆ compensation arrangements relating to dismissal or removal of directors for misconduct to ensure that they are reasonable and appropriate.

- ◆ 列出甄選、委任及重新委任董事的程序；
- ◆ 審議董事會成員的繼任規劃，並定期作出檢討；
- ◆ 披露提名政策及其達成政策所載目標的進度；及
- ◆ 監督及檢討提名政策的正式程序，確保提名政策繼續切合需要，並反映當前監管規定及良好企業管治常規。

就審核委員會而言，其職能包括：

- ◆ 監察發行人財務報表、年度及中期報告及賬目的完整性，檢討風險管理及內部監控；
- ◆ 與發行人的外聘核數師維持適當的關係；及
- ◆ 確保發行人內部有足夠資源撥給內部審核功能，並賦予其適當的地位，以及檢討及監察其成效。

此外，審核委員會亦應該：

- ◆ 每年檢視外聘核數師的獨立性；
- ◆ 監察管理層落實任何關鍵財務報告新準則的進度；及
- ◆ 時刻關注有關財務報告的稅務法律及監管規定的最新發展。

對薪酬委員會而言，其主要職責在於協助董事會，就董事會及高級管理層的薪酬提供建議，以助發行人激勵、挽留及吸納最優秀的人才，為股東創造最大價值。薪酬委員會應考慮：

- ◆ 可資比較的發行人所支付的薪酬、時間投入及職責、集團內的僱用條件；
- ◆ 委任及終止職務條款，確保條款內容公允；及
- ◆ 因董事行為失當而解僱或罷免有關董事所涉及的賠償安排，確保有關賠償合理適當。



Board Diversity and Policy

Under the Listing Rules, every issuer is required to have a diversity policy and to disclose it or its summary in the corporate governance report. In formulating its diversity policy, the issuer should consider the following guidance:

- articulate the benefits of diversity;
- express its commitment to diversify at all levels;
- assess annually on its diversity profile;
- ensure that recruitment and selection practices at all levels are appropriately structured so that a diverse range of candidates are considered; and
- state whether it has identified and implemented programmes that will assist in the development of a broader and more diverse pool of skilled and experienced employees.

On board diversity including gender diversity, it is believed that greater diversity of directors is good for corporate governance because it promotes board effectiveness and enables better decisions to be made due to lessened risk of groupthink. When nominating a director, the board should consider the skills, experience and diversity of perspectives that the nominee is expected to bring to the board.

Risk Management and Internal Control

The board is responsible for risk identification and control including its risk appetite, risk and return trade-offs, risk management and internal control systems. The board should lead in shaping and developing the risk culture and setting the tone at the top. Management is responsible for implementation of the board's risk management policy and procedures.

董事會成員多元化及政策

根據《上市規則》，各發行人須訂有多元化政策，並於企業管治報告內披露該政策或政策摘要。在制定多元化政策時，發行人應考慮以下指引：

- 說明多元化的益處；
- 傳達發行人致力實現全方位多元化的承諾；
- 每年評估其多元化狀況；
- 確保所有級別人員的招聘及甄選均按適當的架構程序進行，以便能招徠多元背景的人選供發行人委聘；及
- 說明發行人有否識別並落實有關計劃，以便培養背景更廣更多元化而富工作經驗和技能的僱員。

就董事會成員多元化（包括性別多元化）而言，一般認為董事背景更多元化有利於企業管治，提高董事會效率，並由於集體思維的風險較低，有利作出更佳決策。在提名董事時，董事會應評估有關人選可為董事會帶來何樣的技巧、經驗及多元觀點與角度。

風險管理及內部監控

董事會有責任辨識及控制風險，處理包括發行人的風險承受能力、風險回報權衡、風險管理及內部監控系統等事宜。董事會應帶頭塑造和發展風險文化，訂立宏觀基調。管理層負責落實董事會的風險管理政策及程序。

公司秘書

選任公司秘書時，發行人應根據業務規模和複雜程度，考慮有關人選是否具有適當的資格和足夠的資歷。公司秘書被視為董事會與管理層、發行人與股東、發行人與監管機構之間的重要溝通渠道。就角色、職能及職務而言，公司秘書應：



Company Secretary

When selecting a company secretary, the issuer should consider whether the candidate is of the right caliber and of sufficient seniority given its size and complexity of operations. A company secretary is regarded as a crucial conduit of communications between the board and the management, the issuer and its shareholders, and the issuer and its regulators. In terms of role, functions and duties, a company secretary should:

- help the issuer construct and maintain a sound and effective corporate governance framework and in particular, a set of risk management and internal control systems to ensure regulatory compliance;
- be aware of developments in laws, rules and regulations;
- be proactive in advising the board;
- ensure that the board receives continuous training on regulatory developments; and
- provide compliance advice to board and senior management.

If the company secretary function is outsourced to an external service provider, the issuer must ensure that:

- such service provider has the resources to follow closely with the issuer's daily affairs to the effect that it can perform its duties properly; and
- a senior executive is designated as the contact person within the issuer who will work closely with such service provider.

For more guidance, issuers are referred to the guidelines "Company Secretary Appointment Guidelines for HKICS Members – Good Practice as to the Number of Appointments as Named Company Secretaries of Hong Kong Listed Companies" issued by the Hong Kong Institute of Chartered Secretaries in March 2018.

Other Guidance

In the note to MBLR3.08 on the duties of directors, reference is made to the duties as summarised in the guide entitled "A Guide on Directors' Duties" issued by the Companies Registry. In addition, directors are generally expected by HKEx to be guided by the Guidelines for Directors and the Guide for INED published by the Institute of Directors. The aforesaid guidelines and guides, together with the Guidance issued by HKEx, constitute the comprehensive guidance for boards and directors as expected of them under the Listing Rules for companies that are listed on HKEx. **M**

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- 幫助發行人建立及維持穩健及有效的企業管治框架，尤其是制定一套風險管理及內部監控系統，以確保合規；
- 知悉法律、規則及法規的發展；
- 積極主動向董事會提供建議；
- 確保董事會接受持續培訓，了解最新監管動態；及
- 向董事會及高級管理層提供合規建議。

發行人若外聘服務提供商擔任公司秘書的職務，必須確保：

- 該服務提供商有足夠資源可密切關注發行人的日常事務，有能力妥善履行公司秘書職務；及
- 公司內一名高級行政人員獲指定為聯絡人，將與該服務提供商緊密聯繫。

如欲獲得更多指引，發行人可參閱香港特許秘書公會於2018年3月發佈的指引「Company Secretary Appointment Guidelines for HKICS Members – Good Practice as to the Number of Appointments as Named Company Secretaries of Hong Kong Listed Companies」。

其他指引

《主板上市規則》第3.08條有關董事職責的附註中，概述了公司註冊處所發出《董事責任指引》概述的職責。此外，港交所一般預期董事遵從香港董事學會刊發的《董事指引》及《獨立非執行董事指南》。上述指引及指南連同港交所公佈的《指引》，對於在港交所上市的公司而言，乃董事會及董事根據《上市規則》預期達到標準的全面指引。 **M**

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