



HKIoD Voices Reservations about “Lead INED” but Affirms Room for Improving Effectiveness of INEDs

Recently, there have been discussions in the financial market about the suggested introduction of a lead independent non-executive director (“Lead INED”) on the boards of listed companies. The Hong Kong Institute of Directors (“HKIoD”) expresses strong reservations about the suggested introduction and states its views regarding enhancing the effectiveness and accountability of INEDs.

HKIoD’s views stem from the legal stipulation that all directors bear equal responsibility as well as the basic principle that INEDs must serve on the board with independent perspective towards protecting the long-term interests of the company and all shareholders. INEDs carry the trust bestowed upon them. HKIoD therefore affirms that INEDs should be effective and accountable in fulfilling their roles. According to HKIoD’s observation, there are INEDs who perform their duties well, particularly those who are recognised recipients of Directors Of The Year Awards. However, there is still room for improvement in terms of change in culture and general development.

“There are many measures that can be taken to enhance INED effectiveness and accountability,” said Dr Christopher To, Chairman of HKIoD. “However, we do not think the appointment of a Lead INED is the solution. Having a Lead INED may be effective where the majority of the board consists of INEDs. If the majority of board members are executive directors and the major shareholders are holding more than 50% of the issued share capital of the company, appointing a Lead INED does not help the independent shareholders in the decisions of the board, except in the case of a connected transaction, in which the major shareholder is already required to abstain from voting.”

“We are concerned with how the appointment of a Lead INED could affect the other INEDs’ perception of their roles and responsibilities, and in turn their desire and motivation to perform,” added Dr To. “Having a number of INEDs on a board helps to widen the opinion base and generate balanced views. The emphasis on the Lead INED risks disrupting this balance.”

Mr Henry Lai, Past Chairman of HKIoD and current Chairman of the Institute’s Corporate Governance Policies Committee, has in mind a number of measures for enhancing the system of INEDs, though the introduction of a Lead INED would not be among such measures. “Firstly, we should review the selection criteria of INEDs, such as independence, special roles expected of each INED, board diversity, et cetera, including the procedures for appointing INEDs,” said Mr Lai. “In addition, priority must be given to initial and ongoing education and

training of INEDs. In some other jurisdictions, it is a developed culture for the INED and the company to seek recognised training in INED practices. Companies should also be encouraged to have more professional and experienced directors appointed as INEDs.”

“Secondly, meetings with independent shareholders can be set up for INEDs *collectively* before every EGM to discuss and explain the resolutions that the EGM seeks to pass, in supplement to the recommendations made by the independent board committee and independent financial adviser (“IFA”),” explained Mr Lai. “Such meetings can be arranged in the interest of serving as another bridge between shareholders and the board, in addition to the company’s Investor Relations communications. In performing their duties, INEDs should be allowed to choose their own IFAs.”

“Thirdly, the inclusion of an INED report in the company’s annual report is another measure to enhance the accountability of INEDs,” added Mr Lai.

Dr Carlye Tsui, CEO of HKIoD, observed, “INEDs need to be educated continually in order to remain up to date on trends of corporate governance. Currently, many companies do not seem to understand or appreciate the functions and benefits of INEDs; hence, they too need to be educated. Continuing education, for both INEDs and other directors and management, is significant in increasing understanding and in encouraging collaborative working relationships, which ultimately result in bringing the true value of INEDs’ contribution to realisation.” She further said, “Corporate governance is in continual evolution. While executive directors and management may be preoccupied with business development, INEDs can act as catalyst for championing board leadership in such issues as ESG adoption and board evaluation. This will enhance the effectiveness of INEDs.”

Dr To remarked, “In some other listing regimes, the ecosystems are characterised by a market with a high ratio of institutional investors to retail investors. In Hong Kong, the reverse scenario holds true, with retail investors outnumbering their institutional counterparts. Having a Lead INED in dialogue with institutional investors may therefore be unfair to the retail investors.”

“In the evolution of corporate governance, HKIoD believes that the number of INEDs in a board can be increased given time, leading ultimately to an INED-majority board,” remarked Mr Lai. “Now it may be appropriate to consider the roadmap towards this majority. Then a Lead INED may be able to serve the leading purpose. Otherwise, it is unfair to the Lead INED as enormous pressure would be thrust solely upon him or her while the other INEDs would remain in the back seat.”

Dr Tsui posed a crucial question, “The final question is: Who will be willing to take up the position of Lead INED, given the tremendous responsibility and liability that the role entails? It will be an immensely difficult task, if not impossible, to look for candidates to fill this position. This also brings up the issue of awarding reasonable remuneration to INEDs, particularly a Lead INED to attract the right candidates.”

About The Hong Kong Institute of Directors

The Hong Kong Institute of Directors is Hong Kong’s premier body representing directors to foster the long-term success of companies through advocacy and standards-setting in corporate governance and professional development for directors. A non-profit-distributing organisation with membership consisting of directors from listed and non-listed companies, HKIoD is committed to providing directors with educational programmes and information service and establishing an influential voice in representing directors. With international perspectives and a multi-cultural environment, HKIoD conducts business in biliteracy and trilingualism. Website: <http://www.hkiod.com>.

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