香港董事學會
The Hong Kong Institute of Directors
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HKIoD Position on INED Roles and "Lead INED"

Preamble

On 19 August 2020, a meeting was convened by HKEX, with participation from Hong Kong Investment Fund Association (HKIFA), Chamber of Hong Kong Listed Companies and The Hong Kong Institute of Directors (HKIoD). The objective of the meeting was to discuss the proposal of HKIFA to mandate a Lead INED (independent non-executive director) to the board of directors of a listed company. This paper records and elaborates on the views expressed by HKIoD at the meeting.

HKIoD philosophy and general direction on the roles of INED

1. In accordance with the spirit of legal stipulation, all directors bear equal responsibility, whether they are executive directors or non-executive directors or INEDs.

2. INEDs are appointed to serve on the board with independence perspective and from this, to look after the long-term interests of the company and of all shareholders.

3. In the evolution of corporate governance, given time, the number of INEDs in a board can be increased. The ultimate goal in the journey is to introduce majority INEDs on the board.

4. HKIoD is committed to education for directors and the general public. In addressing training on the roles of INED, we have developed programmes (a) to continually develop serving INEDs, (b) to groom INED-ready candidates and (c) to enlighten companies in working with INEDs as well as engaging INEDs in the best approach. Ultimately, HKIoD aims to enable INEDs to better fulfill their roles and responsibilities collectively.

5. To attract competent persons to serve as INEDs, reasonable remuneration should be offered. We continually monitor the market trends in INED remuneration.

Addressing issues of mandating Lead INED proposed by HKIFA

1. We understand the rationale of the background for HKIFA's proposal. We have gone through the roles and responsibilities of INEDs proposed by HKIFA and we do not have any disagreement with them.

2. The question raised by HKIFA is accountability of INEDs, which we agree.

3. However, we do not think the appointment of a Lead INED is the solution unless the majority of the board consists of INEDs.

4. If executive directors are majority on the board and the major shareholders are holding more than 50% of the issued share capital of the company, by appointing a Lead INED does not help the independent shareholders in the decision of the board except in the case of a connected transaction, in which the major shareholder is required to abstain from voting.

5. We are concerned how the appointment of a Lead INED will affect how the other INEDs perceive their roles and responsibilities, and in turn their desire and motivation to perform.

6. 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 going against this balance of views.

7. The roles and responsibilities of the Lead INED as proposed by HKIFA should be applicable to all INEDs; and we should encourage all INEDs to perform these functions.

8. In order to establish a system of accountability of all INEDs, we should review;-
    a) The selection criteria of INEDs (independence, special roles expected of each, board diversity etc) and the procedures of appointing INEDs.
    b) The qualifications of INEDs (PRC requires all INEDs to attend a compulsory course/training before eligible to be appointed).
    c) The ongoing education and training of INEDs as well as the company.
    d) Consideration of setting up meetings for INEDs together to meet independent shareholders on a half yearly basis and/or before every EGM to discuss/explain the resolutions that the EGM seeks to be passed in addition to the recommendations made by the independent board committee and IFA, in the interest of serving as a bridge between shareholders and the board.
    e) INEDs to be allowed to choose their own IFA.
    f) An INED report to be provided in the annual report of the company.
    g) INEDs together to be tasked to lead board evaluation.

9. It may be the time to consider the direction of moving towards where INEDs are majority on the board. Then a Lead INED will be able to serve the leading purpose. Otherwise it is unfair to the Lead INED as enormous pressure would be thrusted on him/her alone if the remuneration does not reflect the duties and responsibilities, whilst the other INEDs will remain in the back seat.

10. In addition, currently many companies do not seem to understand or appreciate the functions and benefits of INED. They need to be educated first.

11. Companies should be encouraged to have more professional and experienced directors appointed as INEDs.

12. In some other listing regimes, Lead INED is introduced, based on specific development of ecosystem, as a comply-or-explain provision, not mandatory. Evolution takes time.

13. The final question is who will be willing to take up the position of Lead INED, with heavy responsibility and liability? It will be an immensely difficult task, if not at all impossible, to look for candidates to fill this position of Lead INED.

Presented by The Hong Kong Institute of Directors
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