Board Governance— How Independent Are Boards in Hong Kong Main Board Companies?

CFA INSTITUTE

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Executive Summary

This report continues the CFA Institute series on corporate governance in the Asia-Pacific region. Data on board governance practices were collected from 1,184 main board companies on the Hong Kong Stock Exchange as of 31 August 2010. In addition, we analysed data from the annual reports of 45 Hang Seng Index constituent companies, 121 H-share companies,[1] and 92 red chip companies.[2]

The following findings are based on the 1,184 main board companies on the Hong Kong Stock Exchange:

- Board independence—Although 77 percent of main board companies had independent directors representing at least one-third of their boards, only 9.3 percent had a majority of independent directors.
- Separation of chairman and CEO—67.4 percent of main board companies had separated the roles of chairman and CEO, and 1.7 percent of the chairmen were independent directors.
- Multiple directorships—85.3 percent of the directors held only one position, and less than 1 percent held six or more board positions.

The following findings are based on the set of companies that comprised 45 Hang Seng Index constituent companies, 121 H-share companies, and 92 red chip companies:

- Board committees—Almost all companies had audit and remuneration committees, and about 50 percent had nomination committees.
- Board attendance—Average attendance of board and board committee meetings was above 90 percent.

Our findings indicate that improvement in board governance in Hong Kong can be achieved by increasing the proportion of independent non-executive directors to at least 50 percent. Having a majority of independent directors will also help improve the effectiveness of oversight by board committees. The majority of companies had boards of seven to nine members, and only 9.3 percent had a majority independent board.

The Hong Kong Code on Corporate Governance Practices requires the separation of the roles of chairman and CEO; however, 32.6 percent (about one-third) of the main board companies had a combined CEO and chairman. Where the chairman/CEO format is retained, a lead independent director should be appointed. For the remainder 67.4 percent that have separated the chairman and CEO roles, only 1.7 percent of the chairmen in our study were independent directors. In such cases, investors should evaluate carefully the effectiveness of the chairman and his or her ability to influence the board agenda and act as an independent voice for investors.

[1]H-share companies are Chinese companies incorporated in mainland China and listed on the Hong Kong Stock Exchange.
[2]Red chip companies are Chinese companies incorporated outside mainland China and listed on the Hong Kong Stock Exchange.

1 Introduction

The board of directors is collectively responsible for the stewardship of the business and affairs of the company. The board's task is to set the company's vision and mission as well as to oversee the corporate strategies aimed at securing the long-term success of the organisation. The board is also responsible for reviewing management's performance on a regular basis. The board sets the direction for the values and standards adopted throughout the organisation. The board has a duty to discharge with integrity and transparency obligations to shareholders (minority shareholders in particular) and other stakeholders. In the aftermath of the global financial crisis, a number of shortcomings in board of directors oversight and practice were highlighted. As in many jurisdictions across the globe, new corporate governance codes and best practices were introduced in Asia Pacific that seek to remedy some of the corporate governance weaknesses revealed by the crisis.

In October 2011, the Hong Kong Exchanges and Clearing Limited (HKEx) announced changes to the Code on Corporate Governance Practices (the Code) and amendments to the Rules Governing the Listing of Securities (the Rules) based on the conclusions of a public consultation paper issued in December 2010. The objective of the changes and amendments was to raise the corporate governance of listed companies to a higher level, in line with international best practice. The Code essentially sets out HKEx's views on the principles of good corporate governance with two levels of recommendations: (i) code provisions and (ii) recommended best practices. Listed companies are expected to comply with code provisions, and any deviations from the code provisions would need to be disclosed in the interim and annual reports. Recommended best practices, however, are provided for guidance only.

1.1. Objective of the Report

CFA Institute has a long-standing interest in corporate governance issues. Of the studies undertaken on this topic, we have published, among others, reports relating to executive compensation disclosure in Asia, independent non-executive directors (INEDs), and related party transactions, as well as a manual for investors on corporate governance of listed companies. More recently, CFA Institute, together with the Hong Kong Society of Financial Analysts (HKSFA), submitted comments on HKEx's consultation paper. Although our comments were generally supportive of the proposed revisions, we were of the view that more needs to be done in the area of board independence.

Corporate governance codes, at the international level,[3] have consistently encouraged increased board independence. For example, in addition to separation of the positions of chairman and chief executive officer (CEO) and the creation of independent audit, nomination, and

[3]The *OECD Principles of Corporate Governance* (Organisation for Economic Co-Operation and Development, 2004) stated that the board should be able to exercise objective independent judgement on corporate affairs. Hence, boards should consider assigning a significant number of non-executive board members capable of exercising independent judgement to tasks for which there is a potential conflict of interest.

remuneration committees, many codes indicate that the board should contain a majority of INEDs and have an independent chairman. These measures are expected to improve corporate governance within organisations as well as provide adequate protection for minority shareholders.

The objective of this report is to obtain an overview of some of the board governance practices of main board companies listed on the Hong Kong Stock Exchange. The data were collected from 1,184 main board companies as of 31 August 2010, including governance practices relating to the

(i) independence of the board and board committees,

(ii) independence of the chairman, and

(iii) effectiveness of board members in terms of time commitments.

First, the findings serve to determine the level of compliance with the existing Code and Rules, as well as the amendments announced by HKEx. And second, the findings can be used to identify gaps in the level of board governance of companies listed on the Hong Kong Stock Exchange.

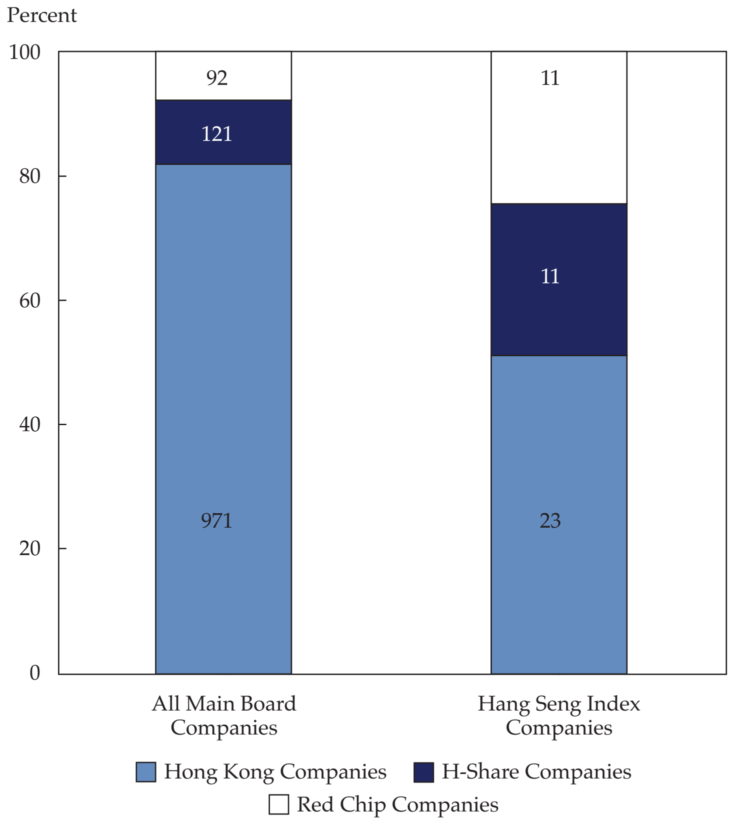
1.2. Description of Data

The analysis in this report was based on companies listed on the main board of the stock exchange (1,184), companies in the Hang Seng Index (45), H-share companies (121), and red chip companies (92) as of 31 August 2010. **Figure 1** provides a breakdown of the types of companies on the main board and in the Hang Seng Index.

The list of directors from the main board companies was obtained from the HKEx website.[4] There were a total of 8,476 directors, representing 10,625 director positions. Data on board committees' and directors' remuneration, however, were based on information extracted from the annual reports of Hang Seng Index constituent companies, H-share companies, and red chip companies. The reporting periods for these annual reports were 31 December 2009, 31 March 2010, and 30 June 2010.

[4] See www.hkexnews.hk/reports/dirsearch/dirlist/directorlist.htm.

Figure 1 Composition of Companies on the Main Board and in the Hang Seng Index



2 Independence of the Board and Board Committees

The level of independence of the board is an important measure of the quality of a company's corporate governance. Yet the definition of independence is highly subjective, and the definition differs in some jurisdictions. A definition of independence that ensures objectivity and autonomy of the board member in relation to both management and controlling shareholders is very important given the ownership structure of most Asian companies. The definition of independence as set forth by HKEx can be found in Appendix 1.

Some of the changes to the Code and amendments to the Rules relating to board independence by HKEx are

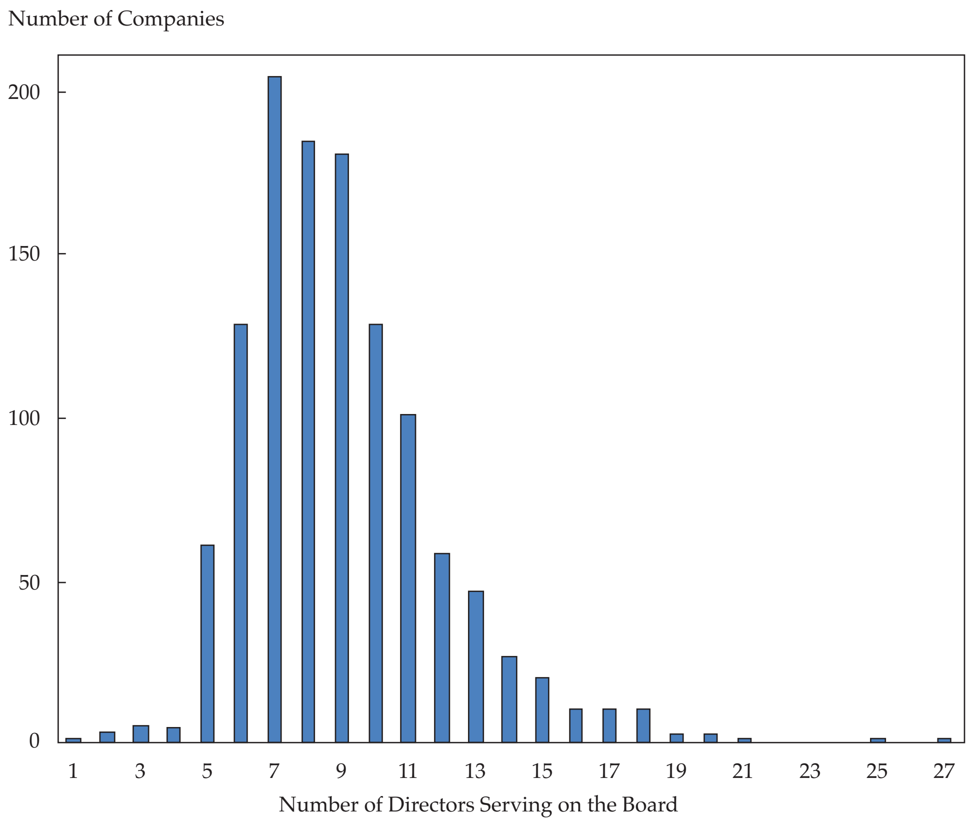
- a listing requirement that at least one-third of the board consist of INEDs, to be implemented by 31 December 2012,
- a listing requirement that issuers must establish a remuneration committee with a majority of INEDs as members and that is chaired by an INED, to be implemented by 1 April 2012,
- a code provision that issuers should establish a nomination committee where a majority of the members are INEDs and that is chaired by an INED or the board chairman, to be implemented by 1 April 2012, and
- new code provisions that the board should be responsible for corporate governance and that the issuer should establish terms of reference on duties that should be performed by the board or board committees, to be implemented by 1 April 2012.

2.1. Board Size

The composition and size of the board of directors will depend on the size and nature of the company's operations. On the one hand, a large board may have difficulty coordinating its members' views, be slow to act, and defer more frequently to the chief executive. On the other hand, a small board may lack depth of experience and counsel and may not be able to adequately spread the workload among its members to operate effectively.

Figure 2 shows that close to 91 percent of the main board companies had board sizes between 6 and 15 members. The smallest board had only 1 member, which is the minimum number under the Hong Kong Company Law, and the largest board, a Hang Seng Index company, had 27 members. Table 1 shows that Hang Seng Index companies tend to have boards that

Figure 2 Distribution of Board Size for Main Board Companies



are larger in size; that is, more than one-third of the companies had 16 or more members on the board. This could be partly due to the selection criteria, where index constituent companies must have high market value and high market turnover—a reflection of the size and complexity of the companies' businesses.

Table 1 Distribution of Board Size for Hang Seng Index, H-Share, and Red Chip Companies

	Hang Seng Index	H-Share	Red Chip
1–5	0%	0%	0%
6–10	24	40	55
11–15	40	50	41
16–20	29	9	3
More than 20	7	1	0

2.2. Representation of INEDs on the Board

The board director's role is to provide independent monitoring of management and hold management accountable to shareholders for its actions. Boards with independent directors are believed to be more effective in their monitoring and improve the likelihood that the board will act independently of management and in the best interests of shareowners. Table 2 shows that close to 77 percent of main board companies had INEDs that made up one-third or more of their boards.[5] Only seven companies, or 0.6 percent, had no INEDs on the board, and two companies had boards that contained 100 percent INEDs. Non-compliance with this recommended best practice was highest among Hang Seng Index (31 percent) and red chip (37 percent) companies.

Table 2 Proportion of INEDs Serving on the Boards of Main Board, Hang Seng Index, H-Share, and Red Chip Companies

	Main Board	Hang Seng Index	H-Share	Red Chip
0 INEDs	1%	0%	0%	0%
<1/3 INEDs	22	31	23	37
=1/3 INEDs	15	9	28	25
>1/3 INEDs	62	60	49	38

If we were to benchmark these findings against the CFA Institute recommendation of majority INEDs on the board, only 9.3 percent of main board companies, 20 percent of Hang Seng Index companies, and 9.1 percent of H-share companies would comply. This means that Hong Kong listed companies still have a long way to go to be at par with international best practice on this matter.

2.3. Representation of INEDs on Board Committees

In order to perform their duties more effectively, boards can delegate responsibilities to board committees. For example, audit committees provide shareholders with a greater assurance that the company's financial statements are aboveboard. Remuneration committees can bring transparency and reasonableness to the compensation packages for directors and senior management. And nomination committees assess the independence of board members in addition to ensuring that they possess the relevant skill sets. Furthermore, the effectiveness of these committees is expected to be enhanced if they consist of a majority of independent members.

[5] This number is comparable with the HKEx's figure of approximately 79 percent of all issuers with INEDs that constitute one-third of their boards as of 31 August 2010.

Table 3 shows that because it is a rule, 100 percent of the Hang Seng Index, H-share, and red chip companies had established audit committees. Compliance with the newly amended listing rule to have a remuneration committee was also high. Furthermore, in line with the newly proposed code provision, a majority of the Hang Seng Index and H-share companies had set up nomination committees. This was an improvement over the findings from HKEx's 2009 review of issuers' compliance with the Code, where 63 percent of the issuers did not have a nomination committee.[6]

Table 3 Established Board Committees

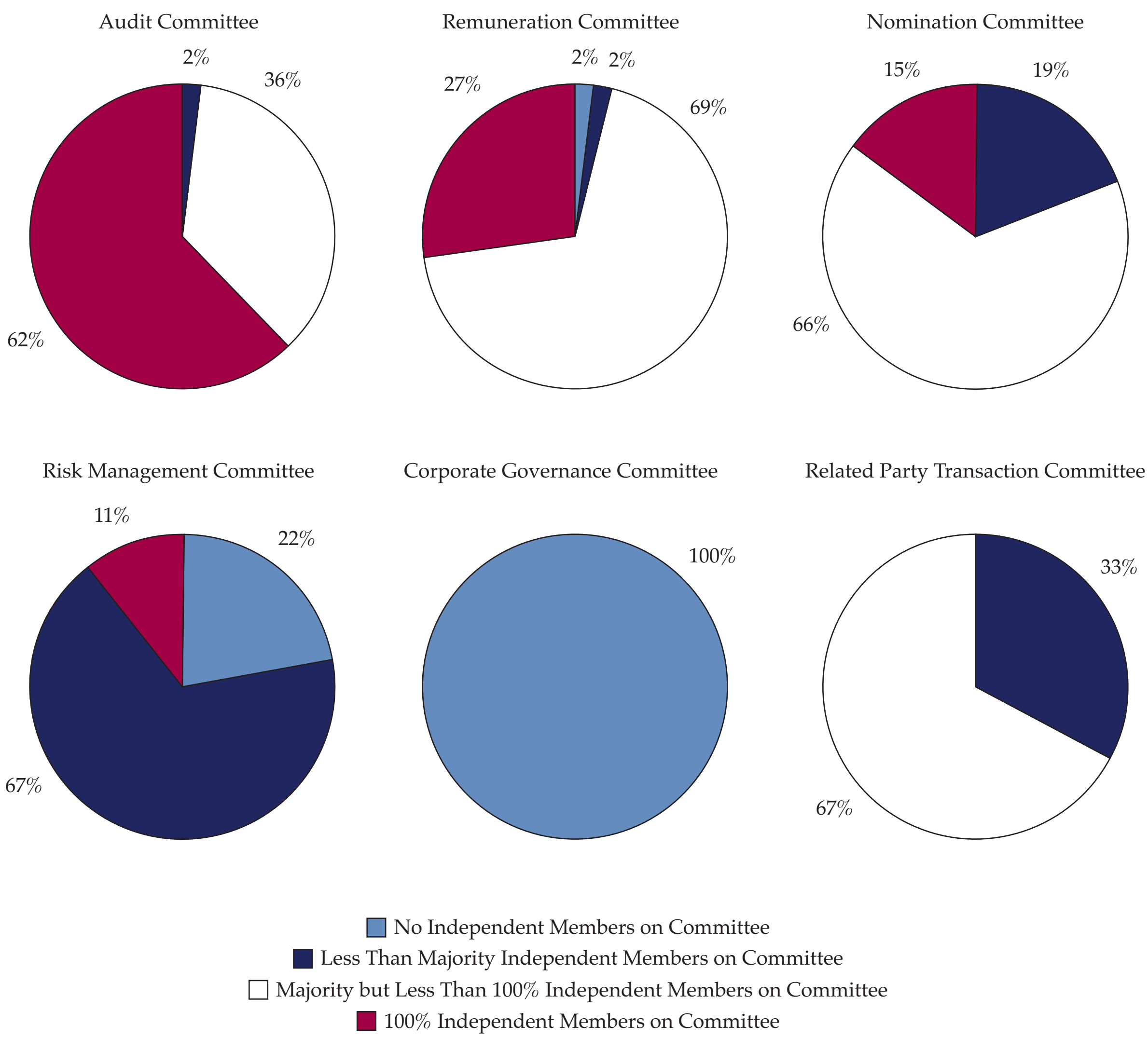
	Hang Seng Index	H-Share	Red Chip
Audit committee	100%	100%	100%
Remuneration committee	100	98.3	97.8
Nomination committee	57.8	69.8	41.8
Risk management committee	22.2	17.7	5.5
Corporate governance committee	2.2	0	3.3
Related party transaction committee	6.7	6.7	0
Strategy committee	24.4	59.7	6.6
Independent board committee	4.4	0.8	3.3
Environmental and social responsibility committee	13.3	5.9	0
Executive committee	20.0	2.5	24.2
Financial investment committee	20.0	15.1	11.0
Human resources committee	2.2	0	0
China committee	2.2	0	0
Provident fund committee	4.4	0	0
Panel member nomination committee	2.2	0	0
Non-competition undertaking review committee	0	0.8	0
Sustainability committee	4.4	0	0
Management committee	2.2	0	2.2
Other committees	13.3	8.4	2.2

Figure 3, Figure 4, and Figure 5 provide a review of the proportion of independent members on selected board committees for the Hang Seng Index, H-share, and red chip companies. The analysis shows that at least 95 percent of the companies had audit committees consisting of a majority of INEDs. In fact, a majority of the Hang Seng Index and red chip companies had 100 percent independent members on the audit committee. The levels of independence among remuneration and nomination committees were also relatively high—that is, 50 percent or more independent members.

The HKEx review of issuers' corporate governance practices in 2009 found that 98.5 percent of issuers had established remuneration committees consisting of a majority of INEDs. Figures 3–5 show levels that were high but not as high as those from the HKEx review. Figures

[6]The 2009 review analysed corporate governance disclosures made by 132 issuers in their 2009 annual reports. The sample was chosen by dividing 1,319 issuers listed as of the end of 2009 into large-cap, mid-cap, or small-cap categories according to their market capitalisation and taking 10 percent of the issuers from each category.

Figure 3 Independent Members on Hang Seng Index Company Board Committees



3–5 also show that listed companies might find it difficult to comply with the HKEx proposal to make the setting up of a corporate governance committee with a majority of INEDs as its members a code provision. None of the corporate governance committees for the Hang Seng Index and red chip companies had a majority of independent members. Instead, in its conclusion in the consultation paper, HKEx introduced new code provisions stating that the board should be responsible for corporate governance and that the terms of reference for this role should be established.

Figure 4 Independent Members on H-Share Company Board Committees

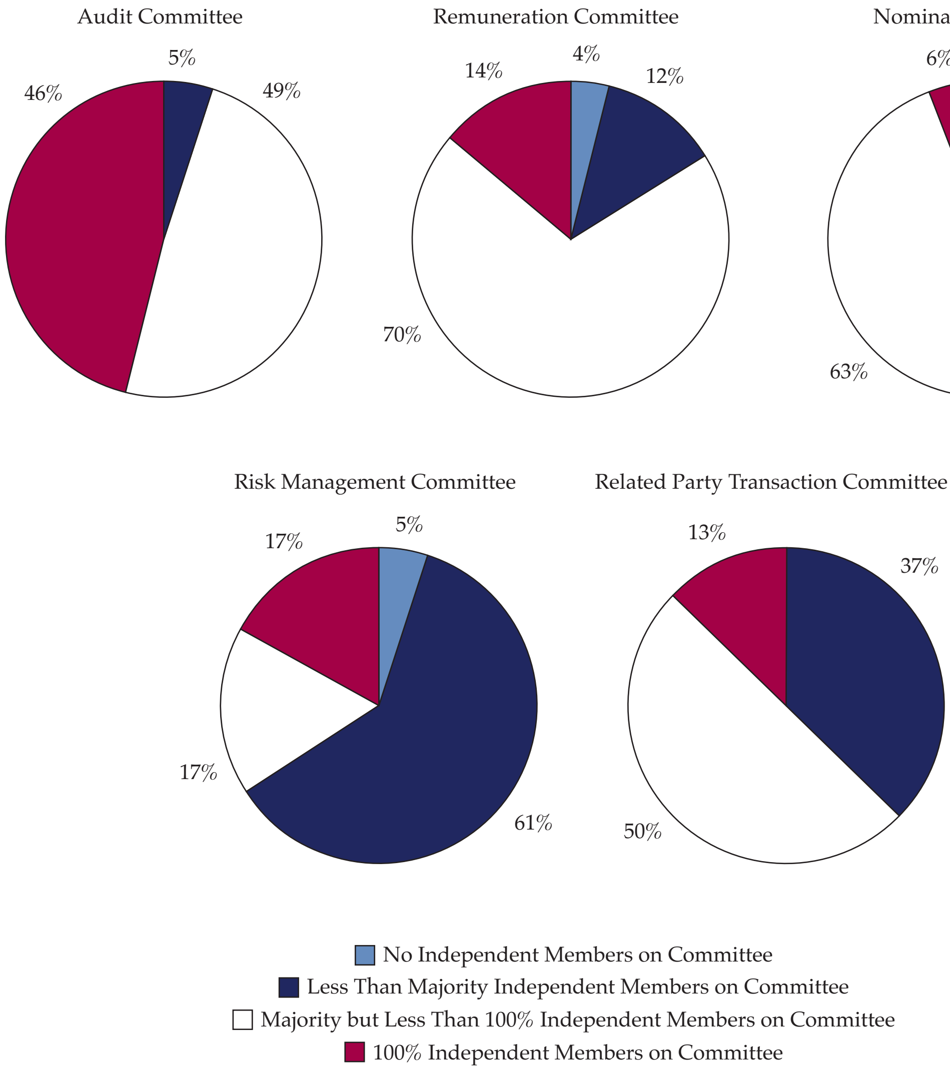
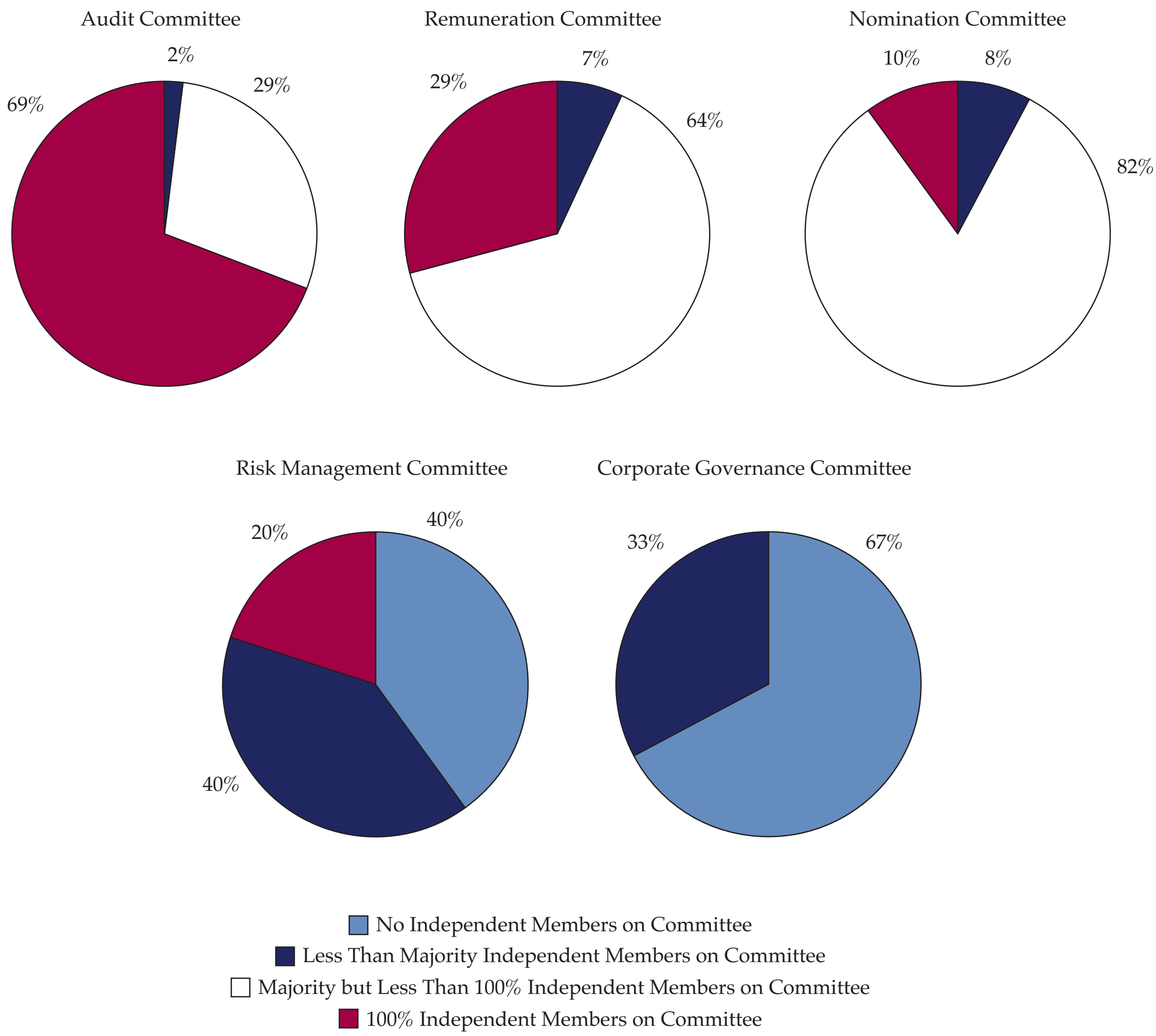


Figure 5 Independent Members on Red Chip Company Board Committees



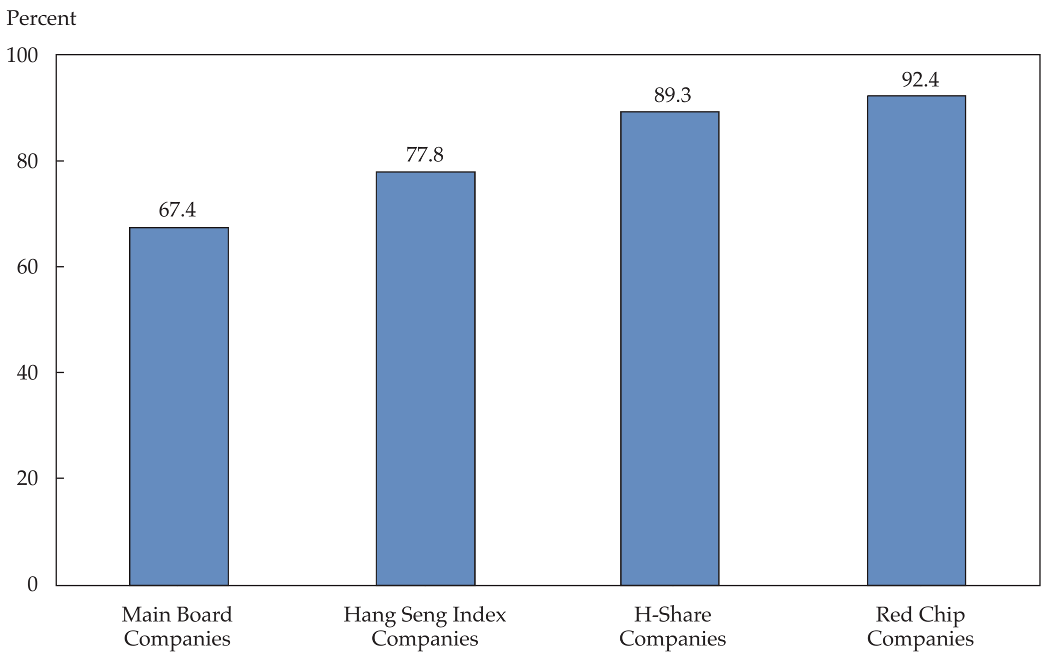
3 Independence of the Chairman

Objectivity of board decisions calls for a clear separation between the management of the board and the management of the company. Combining the chairman and chief executive positions may give undue influence to executive board members and impair the ability and willingness of board members to exercise their independent judgement. Many jurisdictions consider the separation of the chairman and chief executive a best practice because it ensures that the board agenda is set by an independent person who is not influenced by the chief executive. Many companies around the world have kept the combined chairman/chief executive format and introduced a lead independent director as a compromise. In such cases, investors must determine whether the lead director is able to influence the board agenda and act as an independent voice for shareowners.

3.1. Separation of Chairman and CEO

It is a code provision that the roles of chairman and CEO should be separate and should not be performed by the same individual. Figure 6 shows that although close to two-thirds of the companies on the main board complied with this code provision, the levels observed for H-share and red chip companies were significantly higher.

Figure 6 Percentage of Companies Where the Roles of Chairman and CEO Are Separate



3.2. INEDs as Chairmen

Table 4 shows that about 86 percent of the main board companies had a chairman who was an executive director. The proportion of boards chaired by an INED was low, although this figure was marginally higher for Hang Seng Index companies than for main board companies. Our findings imply that the boards of listed companies in Hong Kong might not be as autonomous as desired because the key players on those boards are likely to be aligned with management. This is one area where developments in the corporate governance framework in Hong Kong would require greater focus.

Table 4 Status of Chairman of the Board

	Main Board Companies	Hang Seng Index Companies	H-Share Companies	Red Chip Companies
% of boards chaired by INEDs	1.7%	4.4%	0%	0%
% of boards chaired by NEDs	12.1	24.4	16.5	25.0
% of boards chaired by EDs	86.3	71.1	83.5	75.0

4 Effectiveness of Board Members in Terms of Time Commitments

One governance issue related to the effectiveness of board members is the existence of multiple directorships. Some have argued that directors of multiple boards have less time to devote to each respective company's interests. The counter-argument is that multiple directorships bring more value to each respective company because of the board members' exposure to diverse experiences. Studies on multiple directorships that support this view

- challenged the conventional perception that multiple directorships are detrimental to all companies,[7]
- suggested that calls for a limit to the number of directorships could be ill-advised if the limitation did not take the quality of these obligations into account,[8] and
- concluded that outside directorships for executives could enhance company value.[9]

In HKEx's consultation paper, respondents were asked to consider whether there should be a limit to the number of INED positions an individual may hold and if so, to recommend an appropriate limit. Although CFA Institute is open with respect to the issue of an appropriate limit, we are of the view that shareholders should be made aware that directors who serve on boards for a number of other companies may face constraints in the time needed to serve effectively on each board. Such information should be made available to the shareholders in order to facilitate decision making when the time comes for these individuals to be re-elected to the board.

4.1. Multiple Directorships

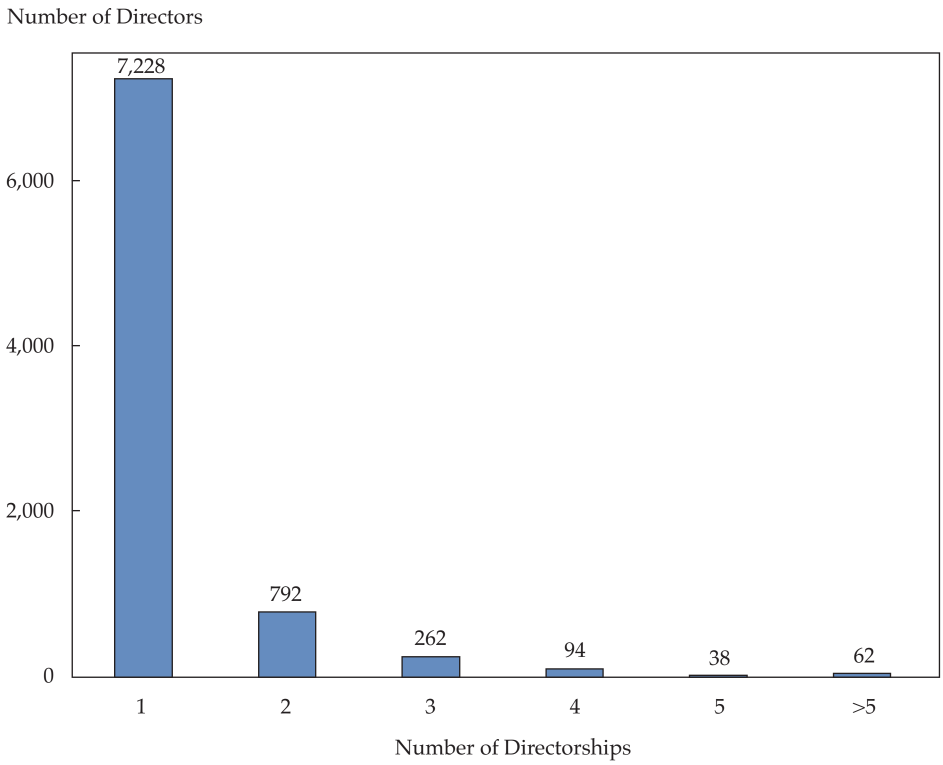
Figure 7 shows that less than 1 percent of directors of main board companies held six or more board positions; the highest number for a single individual was 14 companies. Furthermore, 85.3 percent of the directors held only one position. The data imply that multiple directorships might be a non-issue in Hong Kong because most of the directors seemed to be cognisant of their time commitments in discharging their duties. This could be one reason for HKEx's final decision to drop this reform measure. Having a limit on the number of directorships held, however, would be one way to ensure that the board director is able to adequately commit his or her time to board matters.

[7] M.B. Lowry, L.C. Field, and A. Mkrtchyan, "Are Busy Boards Detrimental?" working paper (Pennsylvania State University, 2011).

[8] C. Andres and M. Lehmann, "Is Busy Really Busy? Board Governance Revisited," working paper (2011).

[9] T. Perry and U. Peyer, "Board Seat Accumulation by Executives: A Shareholder's Perspective," *Journal of Finance*, vol. 15, no. 4 (2005):2083–2123.

Figure 7 Distribution of Number of Main Board Company Directorships Held



4.2. Attendance at Board and Board Committee Meetings

It is a provision in the Code for the board to meet at least four times a year. Figure 8 shows that all the Hang Seng Index, H-share, and red chip companies complied with this requirement. Furthermore, the Hong Kong Society of Accountants recommends that a typical audit committee should meet three or four times each year; Hang Seng Index and H-share companies also showed compliance with this best practice. As for the level of attendance at board and board committee meetings, Figure 9 shows an average attendance level of 90 percent or higher.

Figures 7–9, taken together, show that overall, directors of listed companies in Hong Kong were able to ensure that sufficient time and attention was given to fulfilling their duties.

Figure 8 Average Number of Board and Board Committee Meetings Held in the Financial Year

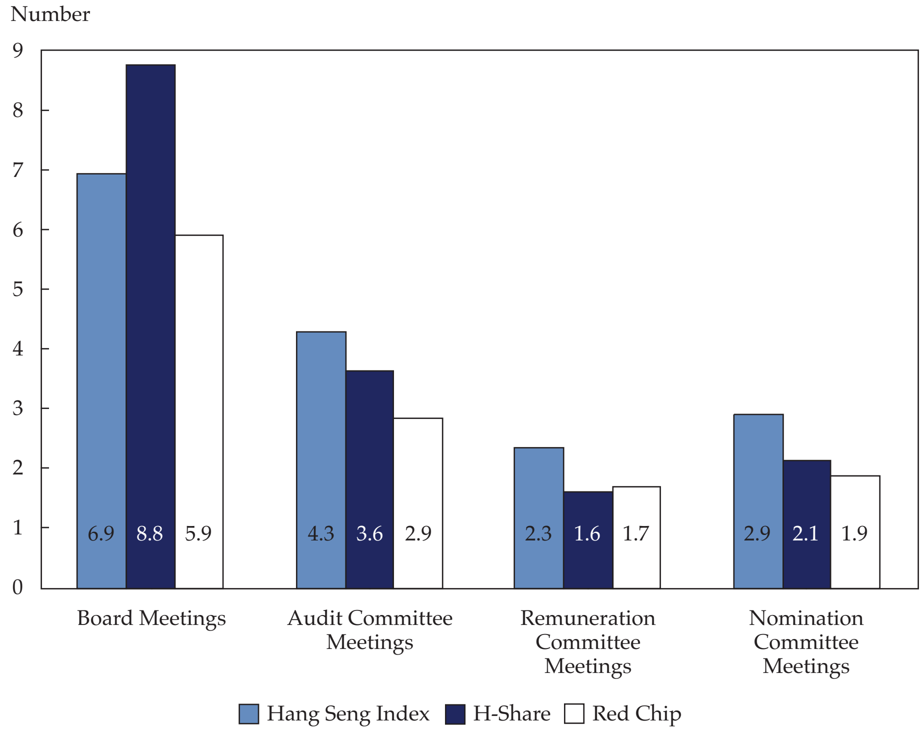
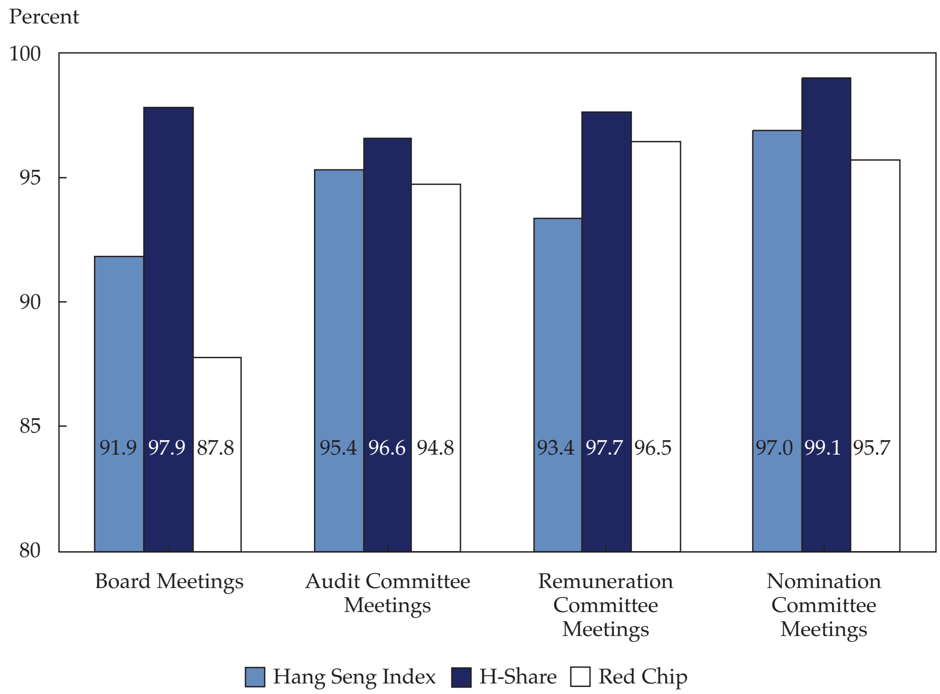


Figure 9 Average Attendance at Board and Board Committee Meetings Held in the Financial Year



5 Remuneration of Board Members

In recent years, the establishment and composition of remuneration committees have increased in prominence. In October 2011, HKEx introduced a new listing rule requiring that remuneration committees be established with a majority of INEDs, which was an upgrade from a previous code provision. The rule further requires an INED as chairman of the committee, and it will take effect on 1 April 2012. Also, the rule requires written terms of reference for the remuneration committee. These changes are in line with regulatory requirements in Australia, the United Kingdom, and Singapore.

It should be noted from Table 3 that nearly all the listed companies on the Hong Kong Stock Exchange had set up remuneration committees at the time of this study.

5.1. Remuneration Levels of Non-Executive Directors

The level of remuneration for directors should be sufficient to attract and retain them for the successful oversight of the company; at the same time, there should be sufficient checks and balances in the setting of directors' remuneration. Figure 10 shows the remuneration levels for non-executive directors, which include INEDs, grouped into three income bands. There seems to be no difference in the pattern for remuneration of non-executive directors for Hang Seng Index and red chip companies, where most of the compensation packages were between HK$100,000 and HK$500,000. For H-share companies, however, most of the compensation packages were less than HK$100,000.

5.2. Board Directors' Remuneration in Other Markets

For information purposes, we also extracted information on total fees paid to non-executive directors in other markets—namely Singapore, the United Kingdom, and Australia.

The data in Table 5 and Table 6 for Hong Kong are based on our data for Hang Seng Index companies for 2009–2010. The data for Singapore, the United Kingdom, and Australia are based on a study conducted by Watson Wyatt in 2009. The Watson Wyatt study involved the top 100 companies by market capitalization for each country.

Figure 10 Remuneration Levels of Non-Executive Directors

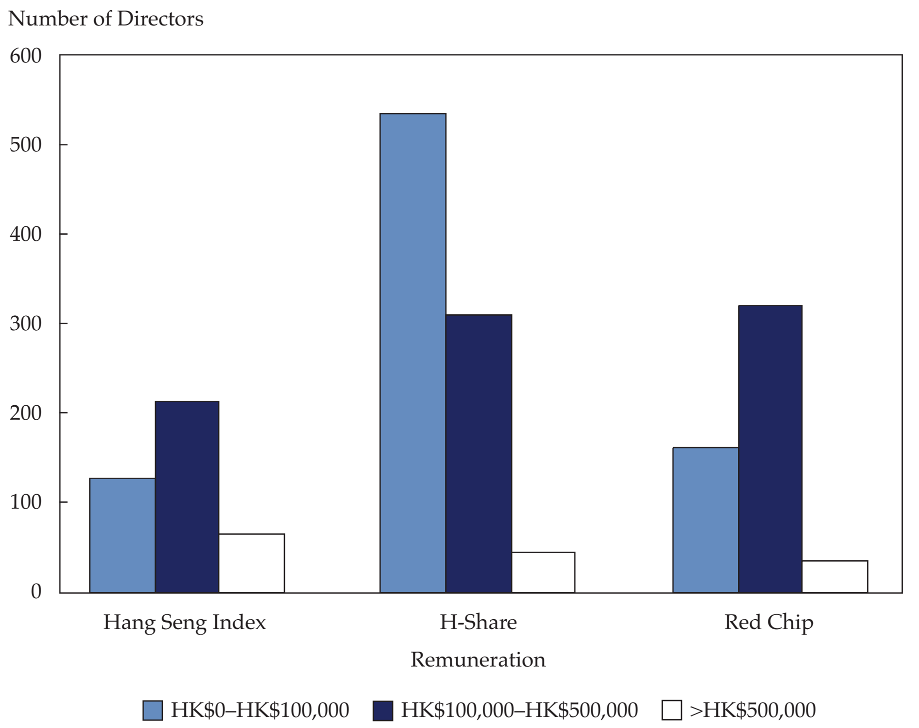


Table 5 Total Fees per NED (Excluding Chairman)

	Singapore	Hong Kong	U.K.	Australia
Mean	SGD87,231	HKD798,824	GBP67,239	ASD131,855
Mean in USD	59,936	102,683	131,729	103,949

Table 6 Total NED Chairman Fees

	Singapore	Hong Kong	U.K.	Australia
Mean	SGD131,605	HKD970,322	GBP309,396	ASD306,051
Mean in USD	85,760	124,728	606,147	241,278

6 Conclusion

The objective of this report is to ascertain the level of independence of boards of Hong Kong main board companies and the level of compliance with Hong Kong regulatory requirements.

The following findings are based on the 1,184 main board companies on the Hong Kong Stock Exchange:

- Board independence—Although 77 percent of main board companies had independent directors representing at least one-third of their boards, only 9.3 percent had a majority of independent directors.
- Separation of chairman and CEO—67.4 percent of main board companies had separated the roles of chairman and CEO; and 1.7 percent of the chairmen were independent directors.
- Multiple directorships—85.3 percent of the directors held only one position, and less than 1 percent held six or more board positions.

The following findings are based on the 45 Hang Seng Index constituent companies, 121 H-share companies, and 92 red chip companies:

- Board committees—Almost all companies had audit and remuneration committees, and about 50 percent had nomination committees; the levels of independence in these committees were relatively high, with more than 70 percent of these committees consisting of a majority of independent members.
- Board attendance—Average attendance of board and board committee meetings was above 90 percent.

Our findings indicate that further improvement in board governance in Hong Kong can be achieved by increasing the proportion of independent non-executive directors to at least 50 percent. HKEx recently made it a listing rule to have at least one-third of the board consist of INEDs by 31 December 2012. This requirement is not sufficient; a higher proportion is necessary to significantly improve the effectiveness of oversight by the board. In addition to requiring an independent audit committee, HKEx has made it a rule for the remuneration committee and a code provision for the nomination committee to consist of a majority of independent directors. Our findings showed that a majority of companies had boards of seven to nine members, and only 9.30 percent of companies had a majority independent board.

The Hong Kong Code on Corporate Governance Practices requires the separation of the roles of chairman and CEO; however, 32.6 percent (about one-third) of the main board companies have a combined CEO and chairman. At companies where the chairman/CEO format is retained, a lead independent director should be appointed. For the remainder 67.4 percent of companies that have separated the chairman and CEO roles, only 1.7 percent of the chairmen were independent directors. In such cases, investors should evaluate carefully the effectiveness of the chairman and his or her ability to influence the board agenda and act as an independent voice for investors.

Appendix 1 Definition of an Independent Non-Executive Director under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Ltd.[10]

Rule 3.10 Subject to the transitional provisions in rule 3.19,

1. every board of directors of a listed issuer must include at least three independent non-executive directors; and
2. at least one of the independent non-executive directors must have appropriate professional qualifications or accounting or related financial management expertise.

NOTE: With regard to "appropriate accounting or related financial management expertise", the Exchange would expect the person to have, through experience as a public accountant or auditor or as a chief financial officer, controller or principal accounting officer of a public company or through performance of similar functions, experience with internal controls and in preparing or auditing comparable financial statements or experience reviewing or analysing audited financial statements of public companies. It is the responsibility of the board to determine on a case-by-case basis whether the candidate is suitable for the position. In making its decision, the board must evaluate the totality of the individual's education and experience.

Rule 3.13 In assessing the independence of a non-executive director, the Exchange will take into account the following factors, none of which is necessarily conclusive. Independence is more likely to be questioned if the director:

1. holds more than 1 percent of the total issued share capital of the listed issuer;

NOTES: 1. A listed issuer wishing to appoint an independent non-executive director holding an interest of more than 1 percent must satisfy the Exchange, prior to such appointment, that the candidate is independent. A candidate holding an interest of 5 percent or more will normally not be considered independent.

2. When calculating the 1 percent limit set out in rule 3.13(1), the listed issuer must take into account the total number of shares held legally or beneficially by the director, together with the total number of shares which may be issued to the director or his nominee upon the exercise of any outstanding share options, convertible securities and other rights (whether contractual or otherwise) to call for the issue of shares.

[10] This definition comes from the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited, Chapter 3.

2. has received an interest in any securities of the listed issuer as a gift, or by means of other financial assistance, from a connected person or the listed issuer itself. However, subject to Note 1 to rule 3.13(1), the director will still be considered independent if he receives shares or interests in securities from the listed issuer or its subsidiaries (but not from connected persons) as part of his director's fee or pursuant to share option schemes established in accordance with Chapter 17;

3. is a director, partner or principal of a professional adviser which currently provides or has within one year immediately prior to the date of his proposed appointment provided services, or is an employee of such professional adviser who is or has been involved in providing such services during the same period, to:

   a. the listed issuer, its holding company or any of their respective subsidiaries or connected persons; or

   b. any person who was a controlling shareholder or, where there was no controlling shareholder, any person who was the chief executive or a director (other than an independent non-executive director), of the listed issuer within one year immediately prior to the date of the proposed appointment, or any of their associates;

4. has a material interest in any principal business activity of or is involved in any material business dealings with the listed issuer, its holding company or their respective subsidiaries or with any connected persons of the listed issuer;

5. is on the board specifically to protect the interests of an entity whose interests are not the same as those of the shareholders as a whole;

6. is or was connected with a director, the chief executive or a substantial shareholder of the listed issuer within two years immediately prior to the date of his proposed appointment;

   NOTE: Without prejudice to the generality of the foregoing, any person cohabiting as a spouse with, and any child, step-child, parent, step-parent, brother, sister, step-brother and step-sister of, a director, the chief executive or a substantial shareholder of the listed issuer is, for the purpose of rule 3.13(6), considered to be connected with that director, chief executive or substantial shareholder. A father-in-law, mother-in-law, son-in-law, daughter-in-law, grandparent, grandchild, uncle, aunt, cousin, brother-in-law, sister-in-law, nephew and niece of a director, the chief executive or a substantial shareholder of the listed issuer may in some circumstances also be considered to be so connected. In such cases, the listed issuer will need to provide the Exchange with all relevant information to enable the Exchange to make a determination.

7. is, or has at any time during the two years immediately prior to the date of his proposed appointment been, an executive or director (other than an independent non-executive director) of the listed issuer, of its holding company or of any of their respective subsidiaries or of any connected persons of the listed issuer; and

   NOTE: An "executive" includes any person who has any management function in the company and any person who acts as a company secretary of the company.

8. is financially dependent on the listed issuer, its holding company or any of their respective subsidiaries or connected persons of the listed issuer.

An independent non-executive director shall submit to the Exchange a written confirmation which must state:

a. his independence as regards each of the factors referred to in rule 3.13(1) to (8);
b. his past or present financial or other interest in the business of the issuer or its subsidiaries or any connection with any connected person (as such term is defined in the Exchange Listing Rules) of the issuer, if any; and
c. that there are no other factors that may affect his independence at the same time as the submission of his declaration and undertaking in Form B or H of Appendix 5.

Each independent non-executive director shall inform the Exchange as soon as practicable if there is any subsequent change of circumstances which may affect his independence and must provide an annual confirmation of his independence to the listed issuer. The listed issuer must confirm in each of its annual reports whether it has received such confirmation and whether it still considers the independent non-executive director to be independent.

NOTE: The factors set out in rule 3.13 are included for guidance only and are not intended to be exhaustive. The Exchange may take account of other factors relevant to a particular case in assessing independence.

CFA Institute

Author

Lee Kha Loon, CFA
Head
Standards and Financial
Market Integrity
Asia Pacific Office

Contributor

Kurt N. Schacht, JD, CFA
Managing Director
Standards and Financial
Market Integrity

www.cfainstitute.org

THE AMERICAS

560 Ray C. Hunt Drive
Charlottesville, VA, USA 22903-2981

(800) 247-8132 **PHONE (USA and Canada)**
+1 (434) 951-5499 **PHONE**
+1 (434) 951-5262 **FAX**

21st Floor
477 Madison Avenue
New York, NY, USA 10022-5802

ASIA PACIFIC

Suite 4905-08
One Exchange Square
8 Connaught Place, Central
Hong Kong SAR

+852 2868-2700 **PHONE**
+852 8228-8820 **INFO HOTLINE**
+852 2868-9912 **FAX**

EUROPE

131 Finsbury Pavement
7th Floor
London, EC2A 1NT
United Kingdom

+44 (0) 20-7330-9500 **PHONE**
+44 (0) 20-7330-9501 **FAX**

Square de Meeûs 38/40
1000 Brussels, Belgium

info@cfainstitute.org **E-MAIL**

www.cfainstitute.org

CFA INSTITUTE

9 780938 367475 90000