Code misses chance to scratch nine-year itch

THE Corporate Governance Council may have missed a golden opportunity to further strengthen board integrity by easing off a recommendation for a nine-year term limit for independent directors.

In its final proposal, the council backed off from an earlier proposal that would have grouped a nine-year tenure together with family relations, substantial shareholdings and employment, among other factors, as tests that would normally deem a director to be non-independent.

Instead, the new version of the proposals now recommends that independent directors who have served for more than nine years undergo “particularly rigorous review” for independence; boards also have to explain why such directors are considered independent, if they pass the reviews.

The council said that it made the change because it did not want to be too prescriptive, and it wanted to give boards the discretion to determine independence.

It also noted feedback from the public that a nine-year threshold may have been too arbitrary.

To its credit, it has continued to stress the risk of non-independence in directors who have been with a company for too long and may have gotten too close to management.

Their insistence on a rigorous review after nine years and disclosure on continued appointment beyond that is also an important safeguard.

The concern that long tenures can affect independence does not seem to be in dispute here. In fact, a nine-year threshold is already instituted in the UK governance code.

Rather, the issue seems to be how much leeway boards should have in assessing that concern, and how onerous compliance might be.

But there are many ways to skin this cat, and the council may have dulled its tool a little too much.

The council mentioned at a press conference that it had gotten feedback that a lot of companies may have had to change their boards if this code was put in place.

An Ernst & Young report in September, citing a National University of Singapore study, said that about a quarter of boards have at least one long-tenure independent director, while 17 per cent of independent directors had served for more than nine years.

The accounting firm’s proposal: Provide a reasonable transitional period.

Indeed, if the council were concerned about compliance burdens, it could have recommended a longer time for compliance on this particular matter. Council members have also vigorously asserted that there is no shortage of director candidates in Singapore, so replacing long-term directors should presumably not be a problem, given enough time.

The proposal for a board-led “rigorous review” can also be problematic when you consider that the board is essentially being asked to determine its own independence.

The council could have taken a page from its own book, in the way it addresses the issue of multiple directorships.

The recommendation on multiple directorships is to ask boards to declare a maximum for their directors. The same can be done with term limits.

Asking boards to declare the maximum tenure of independent directors gives companies freedom to adjust for their own circumstances. And once a company has decided on a term limit, it will be bound to abide by its own rules in the future.