**Question 1**

**Do you agree with our proposal to introduce a code provision ("CP") requiring an issuer's board to set culture in alignment with issuer's purpose, value and strategy?**

Yes

**Please give reasons for your views.**

**Question 2a**

**Do you agree with our proposal to introduce a CP requiring establishment of an anti-corruption policy?**

Yes

**Please give reasons for your views.**

**Question 2b**

**Do you agree with our proposal to upgrade a Recommended Best Practice ("RBP") to CP requiring establishment of a whistleblowing policy?**

Yes

**Please give reasons for your views.**

**Question 3**

**Do you agree with our proposal to introduce a CP requiring disclosure of a policy to ensure independent views and input are available to the board, and an annual review of the implementation and effectiveness of such policy?**

Yes

**Please give reasons for your views.**

One of the most basic tests of board effectiveness is that there exists proactive policies and practices to ensure independent voices and views are presented to the board and committees prior to any key decision being taken. Many markets already have requirements for listed companies to conduct regular assessments of board effectiveness (including US NYSE, UK, India, Taiwan, Malaysia, Brazil, etc.) and in most such assessments, the independence of viewpoints is a critical element.

Currently, the Exchange only recommends that boards conduct a regular evaluation of its performance, but we believe that all Hong Kong public company boards should, consistent with widespread international practice, be required to annually conduct a formal and objective evaluation of board, committee and director effectiveness, including an assessment of each board member's independence.

**Question 4a**

**Do you agree with our proposal regarding re-election of an independent non-executive director serving more than nine years ("Long Serving INEDs") to revise an existing CP to require (i) independent shareholders' approval; and (ii) additional disclosure on the factors considered, the process and the board or nomination committee's discussion in arriving at the determination in the explanation on why such Long Serving INED is still independent and should be re-elected?**

No

**Please give reasons for your views.**

We do not agree with the proposal as currently formulated.

We agree with the Exchange that, ideally, the board would have a mix of short-service, mid-service and long-service directors. There is value to the board in having both fresh perspectives as well as substantial institutional knowledge and understanding. And our data suggests that institutional investors may place a premium on at least one NED having long tenure and institutional knowledge.

We suggest that directors with 9 or more years of service no longer be considered Independent unless they are approved separately by the independent shareholders, similar to the approach currently used in Singapore.

**Question 4b**

**Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new independent non-executive director ("INED") at the forthcoming annual general meeting where all the INEDs on the board are Long Serving INEDs, and disclosing the length of tenure of the Long Serving INEDs on the**

**board on a named basis in the shareholders' circular?**

Yes

**Please give reasons for your views.**

It can be invaluable for companies to have board members with extensive knowledge and background of the company. Indeed, at the start of the Covid pandemic, it was reported in global media that long-serving directors were particularly important contributors to the strategic decision-making process at many companies. However, public boards should also have access to new ideas, different backgrounds, and outside experiences, especially given today's fast pace of technological and business innovations. Ensuring new directors are regularly on-boarded is an easy and effective way to ensure public boards remain fresh.

**<u>Question 5</u>**

**Do you agree with our proposal to introduce a new RBP that an issuer generally should not grant equity-based remuneration (e.g. share options or grants) with performance-related elements to INEDs as this may lead to bias in their decision-making and compromise their objectivity and independence?**

No

**Please give reasons for your views.**

[redacted] view is that boards should always remain independent of management and should serve as shareholders' representatives. To ensure they are effective representatives, they should be aligned over the long-term with the interests of shareholders. One way to improve this alignment is through properly designed equity grants to and the encouragement of share ownership by INEDs. It is true that performance-vesting awards of any kind – including cash and equity – can create concerns regarding board member independence, but we believe there are instances where performance vesting awards could be useful in recruiting, engaging, and appropriately motivating INEDs.

In particular, [redacted] believes that greater use of share awards and requirements for INEDs to hold company shares while serving as directors can significantly improve alignment with shareholders and motivate greater effort and diligence on the part of board members. Overall, share ownership by INEDs should be encouraged. We are concerned that the proposed rule will actually discourage the use of equity to compensation NEDs – currently, our research indicates that over the period 2017 to 2019, only 11% of Hong Kong listed companies made equity grants to INEDs.

The proposed rules should encourage the use of equity, in order to align INEDs with shareholders' interests, while avoiding the perception of reduced or compromised independence from management.

Exchange rules regarding the use of equity to remunerate INEDs should specify that:

o Performance-related pay elements should be carefully considered and designed in such a way as to ensure they do not compromise the independence of INEDs (particularly with regard to the functions of the audit committee);

o Time-vesting share options do not constitute a performance-related pay element, but can align INEDs with long-term shareholder value creation; and

o Share grants and time-vesting share awards can be used to remunerate INEDs for their service while aligning their interests with those of shareholders.

**Question 6a**

**Do you agree with our proposal to highlight that diversity is not considered to be achieved by a single gender board in the note of the Rule?**

Yes

**Please give reasons for your views.**

We agree with the proposal, but we note that the proposed language is limited, lags similar efforts in other markets and is not likely to ensure Hong Kong companies fully capture the benefits of diverse boards.

The proposed diversity rule is quite limited as it focused exclusively on gender – [redacted] has identified at least 8 dimensions of board member diversity: gender, age, tenure, independence, culture / ethnicity, domain expertise, industry experience, and geographic expertise .

While board gender diversity has recently received much attention, the focus is quickly shifting to include ethnic and racial diversity. In most countries, board representation of minorities is distressing: for example, the Parker Review Committee in the UK set a target for FTSE 100 companies to have just one non-white director by 2021 and for the FTSE 250 to do the same by 2024. As of November 2020, only 12% of FTSE 100 board directors were ethnic minorities, and almost one-fifth of these boards had no minority members at all. But just as with gender diversity, there is clear evidence that more ethnically diverse boards are more effective and tend to lead better performing companies. It should be clear that diverse backgrounds and experiences on any team will lead to more innovative solutions and better outcomes.

The proposed rules should require public company boards to have a clearly stated and publicly disclosed policy regarding board and management diversity along multiple dimensions, including gender, race/ethnicity, age, years of service (for INEDs), and background and expertise and any other individual dimensions which are relevant to the organization.

Further, with regard to gender, studies have shown that having a single representative of the opposite gender on the board is not sufficient to reap the benefits of gender diversity – that at least two incumbents are required. Therefore, we urge the Exchange to consider expanding this proposed rule to state each board have at least two members of each gender or one-third of board members, if higher.

<u>**Question 6b**</u>

**Do you agree with our proposal to introduce a Mandatory Disclosure Requirement ("MDR") requiring all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at both: (a) board level; and (b) across the workforce (including senior management)?**

Yes

**Please give reasons for your views.**

While many critics will suggest that numerical targets undermine the board's ability to select the best available talent for each role, there is little evidence that numerical targets – especially numerical targets set by the board itself – actually harm corporate performance or result in poorer hiring decisions. Indeed, as the Exchange itself notes, "Diversity is an important driver of the board's effectiveness."

Compared to these proposed rules, a number of jurisdictions around the world have mandated goals. Norway, France, India, Belgium, and Israel, among others, all have legislated quotas for women on corporate boards of publicly listed companies (such as one-third of board members), and Quebec and California have similar requirements at the provincial/state level in North America.

While we believe that improving gender diversity will improve board effectiveness and organizational outcomes, gender diversity is only one aspect of diversity. We note that Nasdaq has announced that it will require boards to have at least one woman and one director who self-identifies as an underrepresented minority or L.G.B.T.Q. person, and that companies that do not disclose diversity information could be delisted. In addition, Goldman Sachs will require any company that it takes public in the US to have at least one diverse board member.

As Hong Kong companies are increasingly multi-national and looking to exploit market opportunities across Asia and around the world, it will be increasingly important for the composition of boards to reflect the ethnic makeup of these local markets.

The Exchange should strongly consider expanding the focus from just gender diversity to all forms of diversity.

**<u>Question 6c</u>**

**Do you agree with our proposal to introduce a CP requiring the board to review the implementation and effectiveness of its board diversity policy annually?**

Yes

**Please give reasons for your views.**

**<u>Question 6d</u>**

**Do you agree with our proposal to amend the relevant forms to include directors' gender information?**

Yes

**Please give reasons for your views.**

**<u>Question 7</u>**

**Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a nomination committee chaired by an INED and comprising a majority of INEDs?**

Yes

**Please give reasons for your views.**

Based on our research, approximately 96% of Hong Kong listed companies already have a Nominating Committee in place. The addition of a requirement for such a committee would not be a burden and would encourage a more rigorous process for the selection and onboarding of directors.

Further, the proposed membership structure (the committee to be chaired by an INED and composed of a majority of INEDs) better aligns Hong Kong rules with global best practices and gives INEDs an appropriate and formal role in leading the process of selecting and hiring new directors and monitoring and managing board member performance (as noted previously in our response to Question 3, we recommend the Exchange adopt a requirement for boards to conduct an annual self-evaluation of board, committee and director performance and effectiveness).

<u>**Question 8**</u>

**Do you agree with our proposal to upgrade a CP to a MDR to require disclosure of the issuer's shareholders communication policy (which includes channels for shareholders to communicate their views on various matters affecting issuers, as well as steps taken to solicit and understand the views of shareholders and stakeholders) and annual review of such policy to ensure its effectiveness?**

Yes

**Please give reasons for your views.**

As noted in our responses to Questions 3 and 7, [redacted] supports a mandate that the board conduct an annual self-evaluation of the effectiveness of the board as a whole, its committees and its individual members and that a summary of the results of this review be provided to shareholders.

In addition, we would note that amidst the ongoing pandemic, many boards around the world ensured that there were alternative platforms for conducting secure, effective annual general meetings remotely. The Exchange should ensure that shareholders have the ability to attend virtual general meetings in the future, and that such meetings should be interactive and incorporate efficient interfaces with resourceful tools such as electronic voting systems and an open, visible forum for questions and responses. This will ensure that the shareholders are be able to have real-time interaction with the board and senior management.

<u>**Question 9**</u>

**Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements?**

Yes

**Please give reasons for your views.**

**<u>Question 10</u>**

**Do you agree with our proposal to delete the CP that requires issuers to appoint non-executive directors for a specific term?**

**Please give reasons for your views.**

**<u>Question 11</u>**

**Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between corporate governance and environmental, social and governance ("ESG") in the introductory section; and (b) including ESG risks in the context of risk management under the Code?**

Yes

**Please give reasons for your views.**

(a) setting out the relationship between corporate governance and ESG in the introductory section

The proposed rule is in line with global trends and similar efforts elsewhere, including the US, where the SEC looks likely to adopt mandatory detailed disclosure of greenhouse gas emissions, with the support of many companies and investors. For instance, Morningstar submitted comments to the SEC saying disclosures will continue to be incomplete and inconsistent until there is a regulatory requirement for detailed ESG disclosures. Regulators and investors increasingly understand that attention to ESG matters is a critical component of corporate governance, and effective management of these issues creates long-term competitive advantage for companies in all industries.

(b) including ESG risks in the context of risk management under the Code

It is clear to companies, institutional investors and regulators around the world that ESG issues – including, for instance, risks arising from climate change, poor governance, changes in social and demographic makeup of societies – represent a significant financial and operational risk to many organizations. Companies that have clearly documented those risks and understand how to avoid or mitigate those risks will likely enjoy significant advantages, including lower cost of capital, reduced costs, lower insurance rates, and improved operational performance.

The Exchange should particularly consider mandating disclosure regarding the risk of climate change on company outcomes, given that many studies indicate that the Asia Pacific region is particularly at risk for climate related disasters and the impacts of long-term climate change.

**Question 12**

**Do you agree with our proposal to amend the Rules and the ESG Guide to require publication of ESG reports at the same time as publication of annual reports?**

Yes

**Please give reasons for your views.**

**Question 13**

**Do you have any comments on how the re-arranged Code is drafted in the form set out in Appendices III and IV to the Consultation Paper and whether it will give rise to any ambiguities or unintended consequences?**

No

**Please give reasons for your views.**

**Question 14**

**In addition to the topics mentioned in the Consultation Paper, do you have any comments regarding what to be included in the new guidance letter on corporate governance (i.e. CG GL) which may be helpful to issuers for achieving the Principles set out in the Code?**

Yes

**Please give reasons for your views.**

For all of the topics covered in the proposed governance code, one of the most critical behavior modifiers able to effect change in organizations has been largely ignored: executive compensation.

The Exchange should consider broadening and strengthening the current disclosure rules surrounding executive compensation, particularly to include how the board and the remuneration committee have tied issues of corporate culture, risk taking, ESG, diversity and inclusion, climate change and other critical matters of governance and sustainable performance to executive compensation programs, plan designs and individual reward outcomes. Executive compensation disclosure requirements globally are increasingly focusing on “why” executives are paid the way they are in addition to “how much” they were paid – the Exchange's current disclosure rules lag other markets in this regard.

**<u>Question 15a</u>**

**Do you agree with our proposed implementation dates for all proposals (except the proposals on Long Serving INED): the financial year commencing on or after 1 January 2022?**

Yes

**Please give reasons for your views.**

**<u>Question 15b</u>**

**Do you agree with our proposed implementation dates for proposals on Long Serving INED: the financial year commencing on or after 1 January 2023?**

Yes

**Please give reasons for your views.**