



June 18, 2021

Hong Kong Exchanges and Clearing Limited
8/F, Two Exchange Square
8 Connaught Place
Central, Hong Kong
Via email: [REDACTED]

Re: Consultation Paper on Review of Corporate Governance Code and Related Listing Rules

Glass Lewis appreciates the opportunity to comment on the Hong Kong Exchanges and Clearing Limited consultation paper on the Review of Corporate Governance Code and Related Listing Rules.

Founded in 2003, Glass Lewis is a leading, independent provider of global governance services that provides proxy research and vote management services to more than 1,300 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Through Glass Lewis' web-based vote management system, Viewpoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record, audit and disclose their proxy votes.

From its offices in Australia, Germany, Ireland, Japan, the United Kingdom and the United States, Glass Lewis' 360+ person team provides research and voting services to institutional investors globally that collectively manage more than US\$35 trillion. Glass Lewis operates as an independent company separate from its owners, Peloton Capital Management (PCM) and First National Securities Corporation (FNSC). Neither PCM nor FNSC is involved in the day-to-day management of Glass Lewis' business.

The responses provided below are not meant to be exhaustive but are designed to address what Glass Lewis sees as the main issues and concerns raised in the Consultation Paper. Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully submitted,

[REDACTED]

Jeffrey Jackson
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CGI Glass Lewis

[REDACTED]

Enclosure

Question 1: Do you agree with our proposal to introduce a CP requiring an issuer’s board to set culture in alignment with issuer’s purpose, value and strategy?

Yes.

Glass Lewis supports the inclusion of a code provision pertaining the board setting an issuer’s culture as part of an issuer’s purpose, value and strategy. The setting of an issuer’s culture may serve to best facilitate execution an issuer’s business strategy and can influence and reduce misconduct risk.

As issuers are increasingly exposed to media and societal focus, it is critical that all corporate cultures include strong respect for ethical behaviour.

Boards and management can craft a corporate culture which is unique to each business, however each must be rooted in an ethical foundation, including servicing customers best interests and treating employees, suppliers and other stakeholders respectfully.

A commitment to constantly reviewing culture is also important as corporate culture is fickle and requires ongoing effort to maintain or develop.

Overseas studies have found that corporate culture is a significant issue that touches on all elements of an issuer’s business, and all levels within an organization from the board down. Notably, one study has noted an interplay between culture, governance performance, while “weakness in governance, culture and accountability translate directly into financial risk”.¹

Question 2: Do you agree with our proposal to: (a) introduce a CP requiring establishment of an anti-corruption policy; and (b) upgrade a RBP to CP requiring establishment of a whistleblowing policy?

Yes and yes.

Glass Lewis welcomes the proposal to add an anti-corruption and whistleblowing policies as code provisions. To protect against unwanted legal, financial and reputational damage, it is in the best interest of companies to have well-defined and implemented anti-corruption policies. Whistleblower policies should also be adopted by companies to enable boards to be informed of breaches in company policies or applicable laws by providing employees direct channels to communicate problems that may otherwise be buried or concealed by management.

As it currently stands, many Hong Kong-listed companies conduct business within the broader Asia Pacific region. To not have anti-corruption and/or whistleblower policies in place is to potentially invite problems, particularly when business is conducted in countries where corruption is endemic such as

¹ Australian Council of Superannuation Investors and the Australian Institute for Company Directors. [Governing Company Culture, Insight from Australian Directors](#). December 2020. Page 8.

China², Indonesia³, Vietnam⁴, Laos⁵, or Thailand⁶. While Hong Kong companies might not have to abide by laws similar to that of the [Foreign Corrupt Practices Act](#) in the United States, having codified policies in place may help to assure investors that bribery or other corrupt acts are not condoned. Such practices would align with the International Corporate Governance Network’s recommendation that companies:

“... have clearly stated policies to address anticorruption throughout the organization. These policies should be endorsed at the executive management and board levels and clearly communicated within the company. The board has a particular role to play in underscoring the tone and commitment to addressing corruption and related conduct risks and should actively monitor the company’s compliance and risk oversight relating to anti-corruption.”⁷

Expanding such practices by codification as a CP would help to raise the prominence of anti-corruption policies and whistleblower practices, which are currently listing rule requirements in other markets such as Malaysia⁸ and Thailand.⁹

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 and yes.

Glass Lewis supports the code practice requiring companies to disclose a policy ensuring independent views and inputs are available to boards. Further, we believe it is important to conduct an annual review to ensure such policies are implemented effectively. Moreover, this would improve the recommended best practice under the existing corporate code where the board chair should at least annually meet with the independent non-executive directors without the presence of other directors.

² Transparency International. [Country Profile: China](#). Accessed June 8, 2021. China was ranked 78/180 in the Corruption Perceptions Index, while receiving a score of 42/100.

³ Transparency International. [Country Profile: Indonesia](#). Accessed June 8, 2021. Indonesia was ranked 102/180 in the Corruption Perceptions Index, while receiving a score of 37/100.

⁴ Transparency International. [Country Profile: Vietnam](#). Accessed June 8, 2021. Laos was ranked 104/180 in the Corruption Perceptions Index, while receiving a score of 36/100.

⁵ [Country Profile: Laos](#). Accessed June 8, 2021. Laos was ranked 134/180 in the Corruption Perceptions Index, while receiving a score of 29/100.

⁶ Transparency International. [Country Profile: Thailand](#). Accessed June 8, 2021. Thailand was ranked 104/180 in the Corruption Perceptions Index, while receiving a score of 36/100.

⁷ Sub-Section 2.2.1 – Policy. International Corporate Governance Network. [ICGN Guidance on Anti-Corruption Practices](#). London, 2020. Page 9.

⁸ Bursa Malaysia Securities Berhad. Main Market Listing Requirements. [“Listing Requirement 15.29, Anti-corruption and whistle-blowing.”](#) Under the listing requirement, companies are required to establish anti-corruption and whistleblowing policies, which are to be reviewed at least once every 3 years. Moreover, corruption risk must be included in annual assessments on risk, while listed issuers are required to publish on their websites their anti-corruption policies and whistleblowing policies and procedures.

⁹ Security and Exchange Commission of Thailand. Corporate Governance Code 2017. Practices 6.4 and 6.5. The practices call for listed issuers to have clear anti-corruption policies and practices which include communication and staff training as well as the establishing of mechanisms to support whistleblowing. Moreover, Guidelines 5.2.1(7) call for assurances that companies will comply with anti-fraud and corruption law and standards, as well as report on such policies and practices, participation in related initiatives with boards and companies collaborating with peers to implement anti-fraud and corruption measures.

Within the Asia Pacific, there are some similar existing practices in other markets which help to ensure independent views and inputs with mechanisms to review such practices. In India, independent directors are required to hold at least one separate meeting from the non-independent directors, which include reviewing the performance of the board, the board chair and even the flow of information of between management and the board. This separate meeting helps to ensure that independent directors can have their own assessment of management and the non-independent board members.¹⁰

Similarly, Thailand's Corporate Governance Code provides that boards may seek independent professional advice at company expense to ensure they have access to "accurate, relevant, timely and clear information required for their respective roles from the chief executive officer, company secretary, or designate executive." Likewise, Thailand's code encourages non-executive directors to meet without management to discuss their concerns, which can later be discussed with a company's CEO.¹¹

Question 4(a): Do you agree with our proposal regarding re-election of Long Serving INEDs to revise an existing CP to require (i) independent shareholders' approval; and (ii) Additional Disclosure?

Yes and yes.

Glass Lewis welcomes an enhanced ability for shareholders to review a director's independence after serving more than 9 years. Unlike other capital markets, Hong Kong has not set an absolute limit on years of service for independent directors, rather, the current practice is to have an optional shareholder resolution allowing shareholders vote on a director's independence. This is contrast to markets including Pakistan,¹² India,¹³ Sri Lanka,¹⁴ Bangladesh,¹⁵ and the Philippines¹⁶ have already enacted caps on independent director tenure which range anywhere between six and ten years. Likewise, mainland China has a 6-year cap on independent director tenure for independent directors, comprising two, three-year terms.¹⁷

¹⁰ Section VII, Schedule IV, Companies Act, 2013.

¹¹ Security and Exchange Commission of Thailand. Corporate Governance Code 2017. Practices 3.9.6 and 3.9.7.

¹² Independent director tenure in Pakistan is limited to nine years. Specifically, an independent director may serve up to a maximum of three consecutive terms, while each term may not exceed three years. Sections 161 and 166(2)(g), the [Companies Act, 2017](#).

¹³ Independent director in India tenure is limited to 10 years, comprising a maximum of two terms of up to five years, from the date of appointment. Sections 149(10) and (11), the Companies Act, 2013. For Banks, tenure is further for directors other than a chairman or whole-time director is limited to eight years. Section 10A(2A)(i), [the Banking Regulation Act, 1949](#).

¹⁴ Independent directors in Sri Lanka may continuously serve up to nine years on a board but may be reappointed as an independent director following a two-year cooling off period. Section 7.10.4(e), [Colombo Stock Exchange Listing Rules](#).

¹⁵ For independent directors in Bangladesh is limited to two terms of service, with each term being three years. Bangladesh Securities and Exchange Commission. [BSEC Notification No. 7](#). August 2012. Section 1.2(vi).

¹⁶ Independent directors in the Philippines should be limited to serve a maximum cumulative term of nine years, thereafter, they should be perpetually barred from re-election to the same company unless a rigorous review is undertaken of their independence and a "meritorious" explanation of a director's independence is provided. Securities and Exchange Commission Philippines. [Code of Corporate Governance for Publicly-listed Companies](#). November 2016. Recommendation 5.3.

¹⁷ China Securities Regulatory Commission. Guidelines on Establishment of Independent Director Systems by Listed Companies. Article 4.4.4.

In the absence of defined term limits, the proposed enhanced voting system on a director's independence would enable shareholders to provide their input on a director's continued service. Notably, the proposed voting system would be similar to Malaysia's two-tier voting under its 2017 Code on Corporate Governance¹⁸ and Singapore's Exchange Limited's listing rules¹⁹ there may be some advantages of affording companies the opportunity to explain a director's independence. Nevertheless, such a voting system should be limited in use upon a director reaching nine years of service, perhaps up to three years, given that institutional investors are becoming wary of how a director can remain independent after 12 years of consecutive service. This is particularly the case for Malaysia's Employees Provident Fund,²⁰ the California Public Employees' Retirement System ("CalPERS"),²¹ and BlackRock,²² all of whom have adopted policies where they may vote against independent directors serving more than 9 years.

Given that companies may be reluctant to part with certain directors, companies should allow directors to continue to serve on boards, albeit as a non-independent, non-executive director after 9 to 12 years of service. Should any specific tenure limits otherwise be adopted, depending on the outcome of the consultation, long-serving directors could be able to finish their current term if a shareholder voting system is adopted.

Question 4(b): Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new INED at the forthcoming AGM where all the INEDs on the board are Long Serving INEDs, and disclosing

¹⁸ Securities Commission Malaysia. Malaysian Code on Corporate Governance (As at 27 April 2017). Practice 4.2. Page 25. Under this practice, an independent director serving between 9-12 years would have their independence voted on by all shareholders. After 12 years, the two-tier voting system would have shareholders who own or control 33% of a company's issued share capital and all other shareholders vote on a director's independence. Both groups of shareholders would have to vote in the affirmative to retain the director as an independent director. It is noted that Practice 4.2 of the Malaysian Code on Corporate Governance encourages boards to have "a policy which limits the tenure of its independent directors to nine years" while the Guidance 4.2 encourages large companies to not "retain an independent director for period of more than 12 years." From 2022, the two-tier voting process will be to 9 years from 12 years. Securities Commission Malaysia. Malaysia Code on Corporate Governance (as at 28 April 2021). Practice 5.3.

¹⁹ Singapore Exchange Limited. [Rule 210\(5\)\(d\)\(iii\)](#) of the SGX Listing Rules (Mainboard) and Rule 410(3)(d)(iii) will come into effect on 1 January 2022. Prior to 1 January 2022. In this case, a resolution relating to a director's independence after 9 years of service would need to be considered by "(A) all shareholders; and (B) shareholders, excluding the directors and the chief executive officer of the issuer, and associates of such directors and chief executive officer. For the purpose of the resolution referred to in (B), the directors and the chief executive officer of the issuer, and their respective associates, must not accept appointment as proxies unless specific instructions as to voting are given."

²⁰ Malaysia Employees Provident Fund. "[EPF Voting Guidelines at Shareholders' Meeting 2020.](#)"

²¹ CalPERS. "[CalPERS Proxy Voting Guidelines.](#)" April 2021.

²² BlackRock. "[BlackRock Investment Stewardship Proxy voting guidelines for Asia ex Japan, Hong Kong, and Chinese Securities. January 2021.](#)" Page 17. In this case, for listed Malaysian companies, BlackRock may recommend against INEDs serving in excess of 9 years unless there is a cogent explanation. For Hong Kong-listed companies, BlackRock may vote against INEDs with tenure exceeding 9 years in Hong Kong, unless there is a cogent explanation provided by companies. BlackRock. "[BlackRock Investment Stewardship Proxy voting guidelines for Hong Kong. January 2021](#)" Page 6. Likewise, in Europe, BlackRock may vote against INED serving in excess of 9 years in Italy and the UK, while they may vote against INEDs serving in excess of 12 years for other European markets. BlackRock. "[BlackRock Investment Stewardship Proxy voting guidelines for European, Middle Eastern, and African Securities.](#)" January 2021 Page 7.

the length of tenure of the Long Serving INEDs on the board on a named basis in the shareholders' circular?

Possibly and yes.

Glass Lewis views a requirement to appoint a new INED where all INEDs on the board are Long Serving INEDs as necessary only where there is continuing doubt about the independence of the Long Serving INEDs. The CPs considered in Question 4(a) would resolve some of this doubt, however to the extent that doubt remains such a proposal to appoint a new INED would be useful. Ultimately whether or not such a proposal is required will come down to the market implementation of the CPs considered in Question 4(a).

Glass Lewis believes that as a measure of good disclosure, all companies should disclose the tenure of all directors, not just long serving independent non-executive directors. Such disclosure should be included in annual reports and in shareholder meeting circulars as part of the basic disclosure.

Question 5: 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?

Yes.

Glass Lewis supports the adoption of an RBP which would limit the granting of performance-based equity awards to INEDs. Nonetheless, we do believe there is value in independent directors having "skin in the game" alignment with ordinary shareholders, and thus encourage partial remuneration in the form of ordinary equity shares, carrying no performance conditions.

Glass Lewis does not usually support the practice of granting options as part of the remuneration of non-executive directors because, to align the interests of non-executive directors with the interests of public investors, equity participation by non-executive directors should be on an aligned risk profile to that of public investors. Such an objective is not achieved by share options that provide the non-executive director with upside where the share price is above the exercise price but does not provide the non-executive director with any downside below the exercise price. This is a distorted risk and return profile compared to ordinary public shareholders. For avoidance of doubt, Glass Lewis does not support performance-based awards to directors.

We do however support the adoption by listed companies of salary sacrifice share acquisition schemes for non-executive directors. Those schemes have assisted in aligning the interests of non-executive directors and public investors by providing NEDs with equity participation similar in risk profile to that of public investors.

In any case, we suggest companies to have clear and disclosed policies on non-executive director equity participation. Those policies should require their non-executive directors to acquire within a reasonable period of appointment, and thereafter hold whilst they remain on the board, a meaningful investment of their own money in the company's shares, again, so that non-executive directors have equity participation similar in risk profile to that of public investors.

We believe best practice is for the use of use of equity share awards in place of share options, within a minimum shareholding framework by way of salary sacrifice.

Question 6(a) 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.

Glass Lewis believes that board diversity includes diversity inclusive of skills and experience, along with gender diversity. We agree that board diversity cannot be considered achieved if boards remain comprised of a single gender. Further, studies such as by [McKinsey & Company](#) have demonstrated positive correlations between gender diverse boards and company performance. Yet as noted in the consultation paper, among HKEX-listed companies, this a clear disparity in gender diversity when 87.8% of directors are men and the remaining 12.2% of directors are women. It would seem time has come for specific rules to be set to ensure an increased presence of women on board as voluntary approaches are not succeeding in increasing board gender diversity.

When comparing Hong Kong to other regional markets within the Asia Pacific, Hong Kong is not a leader in board gender diversity in terms of code practice or listing or regulatory requirement. Instead, Asia Pacific's regional leaders are Australia followed by Malaysia²³. For the latter, it instituted under its 2017 Code of Corporate Governance, that the top 100 companies by market capitalization or those with a market capitalization of RM 2 billion or higher must have a 30% female board. Malaysia is now going farther on board gender diversity as the 30% female director requirement is being extended to all companies, not just Large Companies.²⁴ Other regional markets that also have gender diversity requirements or practices include India²⁵ and Pakistan²⁶ with specific board gender diversity requirements. From 2022, South Korea²⁷ will implement gender diversity requirements, while Australia maintains board gender diversity recommendations, particularly for S&P/ASX 300 companies²⁸. For

²³ The average percentage of women on boards was 32% for Australian companies, 27% for Malaysian companies, followed by 18% and 17% for Indian and Singaporean companies. BoardEx. [Global Gender Diversity Report 2020](#). Page 3.

²⁴ Securities Commission Malaysia. Malaysian Code on Corporate Governance (As at 27 April 2017). Practice 4.5. However, from 2022, all boards will need to be 30% female directors per the new Practice G5.9, while Practice G5.10 provides that boards will need to disclose in their annual reports company policies on gender diversity for board and senior management. Securities Commission Malaysia. Malaysian Code on Corporate Governance (As at 28 April 2021).

²⁵ Under Section 149(1)(b), Companies Act, 2013, all companies must have at least one woman on a board. As Chapter IV, Section 17(1)(a), Securities and Exchange Board of India ([Listing Obligations and Disclosure Requirements](#)), 2015, further requires at least one independent woman director on the board of the top 1,000 companies by market capitalization.

²⁶ Section Chapter II, Section 7, Companies (Code of Corporate Governance) Regulations, 2017.

²⁷ The Financial Investment Services and Capital Markets Act will require companies with assets of KRW 2 trillion or more to have at least one woman on their board by August 2022.

²⁸ ASX Corporate Governance Council. [Corporate Governance Principles and Recommendations 4th Edition](#). February 2019. Recommendation 1.5. Pages 8-10

other markets, there is generally a broad consideration of gender as being part of the larger consideration of board diversity. This is case for [Japan](#), Singapore²⁹ and Thailand³⁰.

As for implementing board gender diversity, Hong Kong should at a minimum seek to have listed companies have one woman on their boards. In fact, from 2022, Glass Lewis will expect all Hong Kong-listed companies to have at least one woman on their boards.³¹

Should gender diversity take on an approach similar to that of Malaysia, then a phased-in approach with specific timelines to meeting gender diversity levels should be adopted. This would largely follow Malaysia's updated approach in their corporate governance code that companies fulfill the 30% female board gender practice within three years or less.³² Nevertheless, the timeline for having specific board gender diversity practices and/or requirements should begin from January 2022, starting with companies with a financial year end of December 31, 2021.

Question 6(b) Do you agree with our proposal to introduce a 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 and yes.

Please refer to the response for question 6(a) as it relates to board diversity. Consistent to our views on board diversity, we additionally agree with the proposal for targets and timelines across the wider workforce by employee seniority.

Question 6(c) 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.

Glass Lewis welcomes a code practice that results in boards reviewing their performance to include the implementation and effectiveness of board diversity policies.

It isn't enough for a board to simply adopt a board diversity policy. As part of its annual review, all boards should consider how diversity is working to enable the board to meet its goals and overall performance. Moreover, the full report of the annual review of a board diversity policy should be included in annual reports. Otherwise, if it is not feasible to include the full report in the annual report, then a summary should be in annual reports with the full report being made available on company websites.

Question 6(d): Do you agree with our proposal to amend the relevant forms to include directors' gender information?

²⁹Monetary Authority of Singapore. [Practice Guidance – Corporate Governance](#). 6 August 2018. Practice Guidance 4. Page 8. Under the Practice Guidance 4, boards should disclose as part of the nomination process the criteria for identifying and evaluating new directors, which includes diversity, while companies should disclose how the skills, experience and diversity of the board meets the needs of a company.

³⁰ Corporate Governance Code 2017. Guidelines 3.1.1 and 3.1.4.

³¹ Glass Lewis & Co. [Glass Lewis 2021 Policy Guidelines – Hong Kong](#). Page 9.

³² Practice G5.9.

Yes.

To avoid any confusion about a director's gender, especially for names that may be used either the male or female gender, there should be specific indications about a director's gender. This will also help investors and relevant stakeholders avoid any undesired misunderstanding when reviewing director information.

Question 7: Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a NC chaired by an INED and comprising a majority of INEDs?

Yes.

Glass Lewis supports improvements to board committee independence, including having an independent director as the chair of a nomination committee. As is currently the case, Glass Lewis already expects HKEX-listed companies to have a nomination committee that is majority independent with and be chaired by an independent director. In this case, we view independent oversight when it comes to board nominations as paramount since this committee distinctly shapes the board membership. Moreover, independent oversight of board nominations can help to ensure that members with diverse set of skills, experiences and gender can serve major and minority shareholders. Should this rule be adopted, Hong Kong would join Malaysia³³ in requiring a majority independent committee, while India requires the committee chair to be independent³⁴.

Question 8: 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 and yes.

Glass Lewis supports inclusions to the mandatory disclosure requirements that listed issuers disclose their shareholder communication policies, along with an annual review of such policies to ensure their effectiveness. In this case, as issuers are increasing their engagements with their shareholders, issuers are also increasing engagements with other relevant stakeholders, such as professional societies, proxy solicitors, proxy advisors and other interested parties. By providing an MDR, interested parties can ascertain for instance, the best methods for contacting investor relations departments and/or designated directors in order establish contact ahead of engagements. Improved disclosure of communication policies will benefit issuers in a more seamless approach to information dissemination in relevant topics. An annual review will also help to ensure that communication is being handled effectively, while reviews may also help to improve communications.

³³ Bursa Malaysia Main Board Listing Requirements. Chapter 15.08A. Under Practice 4.7 of Malaysia's Code on Corporate Governance, the nominating committee should be chaired by an independent director of the senior independent director.

³⁴ Listing Obligations and Disclosure Requirements, 2015. Chapter IV, Section 19(2). It is noted that currently, Indian companies often have combined nomination and remuneration committees, while the committee must be at least 50% independent.

Question 9: Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements?

Yes.

Glass Lewis welcomes enhanced disclosure of director attendance at all shareholders, board and/or board committee meetings. In this case, it seems prudent to include which directors attended shareholder meetings, both in the poll results, but also as part of the meeting minutes, especially if questions are asked and answered. Disclosure of director attendance also helps shareholders know which directors are steadily attending shareholder meetings.

Question 10: Do you agree with our proposal to delete the CP that requires issuers to appoint NEDs for a specific term?

No.

Glass Lewis opposes the proposal to delete the code practice that provides for non-executive directors to have specific terms. While some markets may be relaxing the timeframe in which a director stands for election by rotation, to eliminate specified terms effectively reduces shareholder rights to assess a director's performance by way of standing for election.

In looking at other Asia Pacific markets, most have set terms for directors³⁵, while we note India currently allows for some directors to be exempt from retirement by rotation. Specifically, while independent non-executive directors have fixed terms, the remaining executive and non-executive directors could have non-retiring terms, provided that not more than 33% of those directors have such an exemption provision.³⁶ Our concern is that exemptions from retirement by rotation may lead to major or controlling shareholders entrenching themselves on boards, without being subject to any shareholder oversight by way of elections. In fact, where we find non-independent non-executive directors who are being appointed for terms that not subject to retirement by rotation, we recommend shareholder oppose such appointments.³⁷ Were similar practices adopted in Hong Kong, we would likely recommend shareholders oppose such appointments as well.

Further, as many HKEX-listed companies are dominated or outright controlled³⁸, the elimination of specified non-executive director terms could harm Hong Kong's corporate governance reputation. In this case, the proposed change does not have any corresponding changes to increase overall board independence, or even limit the number of directors who could be exempt from retirement by rotation. The danger is that while 33% of the board must be independent the other 67% of the board seats could

³⁵ Some markets include Singapore maintains 3-year terms for all directors, Rule 720(5) of the SGX Listing Rules (Mainboard) / Rule 720(4) of the SGX Listing Rules (Catalist). Malaysia maintains a similar 3-year requirement under Chapter 7, Part J, Rule 7.26 of the Bursa Malaysia Main Market and ACE Market Listing Requirements. In the Philippines all directors stand for election each year as they only have one-year terms per Section 22 of the [Revised Corporation Code of the Philippines](#). In Thailand, one-third of boards must be up for election at AGMs, per Section 71 of the Public Limited Company Act B.E. 2535.

³⁶ Companies Act, 2013. Section 152(6)(a)-(e).

³⁷ Glass Lewis & Co. [Glass Lewis 2021 Policy Guidelines – India](#). Page 14.

³⁸ The OECD identified at least in 2012 that of Hong Kong and Chinese companies on the HKEX, 75% had a dominant shareholder controlling more than 30% of a companies issued shares. OECD. [OECD Survey of Corporate Governance Frameworks in Asia, 2017](#) Page 5.

be dominated by major or controlling shareholders such as founding families, all of whom could have non-specified terms, or worse yet, not have to stand for periodic election by rotation. Such a development could deprive minority shareholders of opportunities and their rights to voice their concerns at director elections. As proposed, the deletion of the code practice is antithetical to the premise of all shareholders being able to vote on all directors of a board.

Question 11: Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between CG and ESG in the introductory section; and (b) including ESG risks in the context of risk management under the Code?

Yes and yes.

Glass Lewis supports the proposed elaborations of the inter-relationship between corporate governance and environment, social and governance matters, along with how they align with risk management in the Code. ESG is quickly reaching a position of prominence among institutional investors and even retail investors. For investors, they want to be sure that companies they are invested are update to date on matters impacting ESG since awareness to ESG is actually more favourable to companies in their performance than otherwise ignoring it.³⁹ On a corporate governance front, if companies fail to follow the evolving world of ESG, the consequences could be serious whether from loss of shareholder support to shareholders taking the initiative to change boards⁴⁰, executive compensation reductions⁴¹, even financial impacts on companies.⁴²

While it is one thing to elaborate on linkages between ESG and corporate governance, it is another thing to act. In this case, we encourage new code practices that strengthen risk oversight, especially on ESG matters by calling for risk management committees to be added to boards. This can be done by following approaches that are already in place such as in Malaysia, where risk management committees comprising a majority of independent directors are increasingly commonplace.⁴³ Or, an approach similar to India could be considered. Specifically, until recently, the top 500 companies by market capitalization were required to have a risk management committee, which expanded to the top 1,000 companies by market capitalization. The risk committees must also have formulated policies to address ESG related risks along with systems to review such policies.⁴⁴

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.

³⁹ Witold Henisz, Tim Koller, and Robin Nuttall. [“Five ways that ESG creates value.”](#) *McKinsey Quarterly*. November 2019.

⁴⁰ Matt Phililips. [“Exxon’s Board Defeat Signals the Rise of Social-Good Activists.”](#) *New York Times*. June 9, 2021.

⁴¹ Bernadette O'Donoghue. [“Shareholder Revolt at Rio Tinto Highlights Deepening Relationship Between ESG and Pay.”](#) May 11, 2021.

⁴² Mayra Rodriguez Valladares. [“Financial Institutions Are On Notice That Weak Governance Can Lead To Ratings Downgrades And Significant Fines.”](#) *Forbes*. May 25, 2021.

⁴³ Malaysian Code on Corporate Governance 2017. Practice 9.3.

⁴⁴ Securities and Exchange Board of India. [Securities and Exchange Board of India \(Listing Obligations and Disclosure Requirements\) \(Second Amendment\) Regulations, 2021](#). May 5, 2021. Page 13.

Glass Lewis agrees with the proposal to require the publishing of ESG reports at the same time of annual reports. In this case, as more and more investors are looking into ESG matters, it is beneficial to have all relevant information be made available at the same time as it could impact shareholder voting decisions at general meetings. This change in disclosure would align with similar disclosure practices as Thailand’s “One Report” which would combine disclosure of ESG report with the annual report from 2022.⁴⁵

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 this paper and whether it will give rise to any ambiguities or unintended consequences?

None at this time.

Question 14: In addition to the topics mentioned in this paper, do you have any comments regarding what to be included in the CG GL which may be helpful to issuers for achieving the Principles set out in the Code?

None at this time.

Question 15: Do you agree with our proposed implementation dates of: (a) for all proposals (except the proposals on Long Serving INED): financial year commencing on or after 1 January 2022; and (b) for proposals on Long Serving INED: financial year commencing on or after 1 January 2023?

We believe that all changes can be implemented from January 1, 2022, while for long-serving INEDs, that will depend on the approach as determined by HKEX.

⁴⁵ The Securities and Exchange Commission, Thailand. [“SEC adjusts criteria to reduce burden on listed companies to submit a single report \(Form 56-1 One Report\) and enhance ESG disclosure level”](#). September 1, 2020.