

June 30, 2021



Mr. Nicolas Arguzin  
Hong Kong Exchanges & Clearing Limited  
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8 Connaught Place  
Central, Hong Kong

**The American Chamber  
of Commerce in Hong Kong**  
Rm 602, Two Chinachem Central  
26 Des Voeux Road Central  
Hong Kong

**RE: HKEX Consultation on Review of Corporate Governance Code and Related Listing Rules**

Dear Mr Arguzin,

The American Chamber of Commerce (“AmCham”) is one of the largest international business chambers in Hong Kong, and represents a broad and diverse membership. One of our missions is to foster commerce among the US, Hong Kong and Mainland China, and to enhance Hong Kong's stature as an international business center. On behalf of our members, we are pleased to be able to respond to this important consultation exercise.

With ethical and responsible business practices being one of our core values, AmCham fully supports HKEX's proposal to amend the Corporate Governance Code (the “Code”) and Listing Rules to promote good corporate governance across the board, which is of paramount importance to Hong Kong's competitiveness as an international financial center. While culture, director's independence, nomination committee, communications with shareholders, and transparency are no less important aspects of an effective corporate governance to maintain investors' confidence, we wish to comment specifically on Diversity and ESG, both of which are core to our members' interests in driving Hong Kong's sustainable growth.

**Diversity**

While AmCham agrees that diversity should not be considered to be achieved by a single gender board, our members wish to see Hong Kong as a leader and a champion of gender diversity. Given the deep bench of female talent in Hong Kong, we are concerned that a transition period of three years would be far too long for Hong Kong to move sufficiently fast enough to compete with other jurisdictions. It is important that Hong Kong take rapid action as it is one of only a few jurisdictions where the number of all male boards rose in 2020 according to research from MSCI.<sup>1</sup> According to MSCI's annual report “Women on Boards”, Hong Kong is not only slipping relative to global financial hubs like London but also against financial hubs in Asia like China and Singapore. Over the past five years Hong Kong's total number of director seats held by women has remained around 12%, while Singapore has increased theirs from 11.2% in 2016 to 19.5%. AmCham therefore urges HKEX to shorten the transition period for existing issuers with single gender boards to appoint director(s) of the absent gender on their boards from three to two years. A phased approach that is aligned with the target percentage set forth below is recommended for this measure to be effectively implemented in a gradual manner.<sup>2</sup> In order to further diversity, AmCham recommends a Nomination Committee chaired by an independent executive director (INED) and comprised of a majority of INEDs.

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<sup>1</sup> MSCI – Women On boards – 2020 report – Released November 2020: [Women on Boards \(icdm.com.my\)](https://www.icdm.com.my)

<sup>2</sup> For example, for a ten-member board, appoint one director of the opposite gender (i.e. achieve board diversity of 10%) by 2023, and two to three directors (i.e. achieve board diversity of 25%) by 2024.

AmCham also supports the proposal to introduce a new Mandatory Disclosure Requirements (MDR) and require listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at both board level and across the workforce (including senior management). HKEX may also consider adjusting these targets based on the size of the issuer board (e.g. at least 2 for boards with less than 7 members, 3 for 8-11 members, and 4 for more than 11 members as an example). If necessary, HKEX could introduce mandatory requirements with penalties for issuers who fail to meet the above targets in 2024. The ultimate objective is to encourage issuers to set measurable objectives in implementing their diversity policy.

To supplement the above enhancements, AmCham also supports the proposal to introduce a new Code Provision (“CP”) under the Code to require the board to annually review the implementation and effectiveness of the board diversity policy, as well as to amend the relevant forms to include director’s gender information. It is also recommended to establish a public database to be updated bi-annually and to include the following data: 1) the percentage of women on boards of HIS companies, 2) the percentage of women of boards across all issuers, 3) the percentage of women appointed to new IPO issuers, and 4) the percentage of women appointed to boards in the preceding period compared to men. The director’s information should also include a summary of background and skill sets in addition to gender. Steps to enhance transparency like these have been shown to have a positive effect on driving companies to embrace more diverse and representative boards.

Further, the boards of listed issuers in Hong Kong have a high concentration of directors with finance, accounting, and business backgrounds. It is also a common feature among PRC issuers and those issuers with a strong PRC background that their boards compose of directors entirely or predominantly from Mainland China with few directors from Hong Kong, overseas or with different ethnic backgrounds. Also, directors from different stakeholders’ backgrounds such as those from the local community, employees, customers and suppliers continue to remain relatively few. While AmCham supports gender diversity in Hong Kong, AmCham also supports diversity to include recognition of the benefits brought by directors with different social and ethnic backgrounds as well as cognitive and personal strengths (see Principle J of the UK Corporate Governance Code 2018). In this regard, AmCham proposes: (1) the Listing Rules and the HK Corporate Governance Code should define diversity to include gender, social and ethnic background, cognitive and personal strengths; (2) diversity policies of listed issuers should aim to cover different aspects of diversity, including gender; and (3) measurable objectives to be achieved within the next three years should be set by listed issuers and report on their progress in achieving such objectives in their periodic reports. Both the diversity policies and measurable objectives should be regularly uploaded on HKEX’s website.

## **ESG**

AmCham applauds HKEX’s efforts in its 2019 ESG Consultation emphasising the importance of board governance on ESG matters to ensure quality ESG performance and reporting. It supports HKEX taking steps to further elaborate the linkage between the Code and the ESG Guide. In addition to the board being responsible for evaluating and determining the nature and extent of risk, AmCham is of the view that HKEX should continue to require the board to disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks.

On ESG reporting, AmCham agrees in principle that there should be a timely disclosure of ESG reports. We also agree of an integrated reporting timeline (of financial and non-financial information) makes sense in principle. From that perspective we call for the consistent standardization of ESG reporting in terms of both content and timeline with mandatory climate-related disclosures aligned with the American-led Task Force on Climate-related Financial Disclosures (TCFD) by 2025. This is in line with initiatives launched by the Hong Kong Green and Sustainable Finance Cross-Agency Steering Group,<sup>3</sup> which is co-chaired by the Securities and Futures Commission and the Hong Kong Monetary Authority. However, in practice, not all of the relevant input data is available to all reporting companies, and as such companies should only be required to comply with simultaneous disclosure after a grace period of 3 years.

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<sup>3</sup> <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2020/12/20201217-4/>

## **Consolidated Guidelines on board effectiveness**

HKEX has indicated in its consultation paper that it will provide a number of guidelines to assist listed issuers to disclose high quality information for investors to evaluate listed issuers' governance and how it contributes to achieving long-term success and wider objectives. Instead of providing a number of different guidelines for separate corporate governance principles, HKEX should consolidate all guidelines into one consolidated guideline for convenience of and ease of reference by listed issuers.

As always, I, and AmCham's members, look forward to the opportunity to continue to engage with HKEX in a constructive and beneficial dialogue about these issues.

Yours sincerely,



Tara Joseph  
President