



KPMG  
8th Floor, Prince's Building  
Central, Hong Kong  
G P O Box 50, Hong Kong  
Telephone +852 2522 6022  
Fax +852 2845 2588  
Internet kpmg.com/cn

**Hong Kong Exchanges and Clearing Limited**  
12/F, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

Our ref PMS/RC

8 December 2017

Dear Sirs

**Re: Consultation paper on Review of the Corporate Governance Code and Related Listing Rules**

KPMG welcomes the opportunity to respond to the Consultation paper on Review of the Corporate Governance Code and Related Listing Rules. Unless otherwise noted, terms used in our response herein shall have the same meanings as those defined in the two consultation papers.

We have considered the proposals and we are in support of upholding the Corporate Governance standards as Hong Kong continues to be one of the world's leading capital markets.

In today's business world, sound corporate governance practices are critical in supporting future growth targets and increasing market share, whilst also providing the transparency that investors demand. Regulators continue to increase mandatory corporate governance requirements, and the Hong Kong market is no exception following the implementation of the Hong Kong Code on Corporate Governance Practices.

One of the most important challenges for board members is to build a foundation of trust - with management, the investment community, regulatory agencies and the public. The stakes are high and the margin for error is low. While new standards are emerging, one thing remains clear: the responsibility for adopting sound governance practices has been placed squarely on the shoulders of corporate directors and officers.

In response to this, we have set out the following comments and suggestions to facilitate further development or consideration of the proposals.

**INEDs**

*Overboarding and INED's time commitment*

An effective independent non-executive director (INED) should commit adequate time and attention to understanding the operations of the company which will involve receiving regular briefings from management end. We believe this aligns with the HKMA Guidance<sup>1</sup> which stresses time commitment of INEDs and expectation of their involvement between board and committee meetings. We also note that the same HKMA Guidance brought in rules on minimum fees of INEDs. We are supportive of the proposal to ensure sufficient justification is provided for all INEDs who will be holding their seventh or more listed company directorship on their ability to devote sufficient time to the board.

<sup>1</sup> Empowerment of Independent Non-Executive Directors (INEDs) in the Banking Industry in Hong Kong. Issued by Hong Kong Monetary Authority on 14 December 2016. B9/149C.



In addition, we would suggest to introduce a new recommended best practice (RBP) to include the requirement for the expected time commitment of the INED to be stated in their letter of acceptance. This would enable transparency of the alignment of an INED's remuneration with the expected time commitment.

#### *Board Diversity*

In terms of Board Diversity there were three questions put forward. We particularly note that various research reveals that Hong Kong is lagging behind other major international markets in terms of gender diversity.

In respect of Question 2, we agree that issuers should disclose their diversity policy or a summary of the policy in their corporate governance reports. We also consider diversity can be further enhanced by requiring the policy to have specific measures concerning gender diversity. A diverse and inclusive board encourages better understanding of customers and stakeholders, robust decision making and constructive challenge, as well as new ideas, perspectives and increased innovation.

In respect of Question 3, the G20/OECD Principles<sup>2</sup> call for full and timely disclosure of the experience and background of candidates for the board and the nomination process, as well as information about any other board positions that nominees hold. Disclosure facilitates shareholder participation in key corporate governance decisions, and enables a more informed assessment of the abilities and suitability of each candidate. We are also supportive of having the board state in the circular to shareholders accompanying resolutions to elect directors the process used for identifying the nominee, the perspectives, skills and experience that the person is expected to bring to the board and the manner in which the nominee is able to contribute to the diversity of the board.

CP B.1.9 was introduced as a Recommended Best Practice in 2012. To align with other international markets, we suggest to upgrade it to a Code Provision and further enhancing it by requiring an external evaluation at least every three years.

In respect of Question 4, we strongly believe that the requirement to disclose measurable objectives for ensuring adequate board diversity and for the companies to provide progressive reporting on such initiative would help promoting diversity amongst boards.

#### *INED's Independence*

We support extending the cooling off period for professional advisers to strengthen INED's independence. Nonetheless, we are mindful that the extended cooling off period, together with the heightened time commitment expectations may further reduce the pool of available INEDs. Therefore we propose that the two year increase of the professional advisers' cooling-off period prior to any form of nomination as a director of the company should be a CP instead of a Rule. This is consistent and aligned with a majority of the other market players such as the HKMA who only requires a one year cooling-off period. Nevertheless a three year cooling-off period would still be enforced if the potential INED was the engagement partner for professional services provided.

On the whole we are supportive of ensuring the transparency of cross directorship and that they should be disclosed in the company's Corporate Governance Report. We believe that this is essential and should be taken further by having INED family ties disclosure set out as a RBP instead of a Note and the definition of "immediate family member" be widened to include dependents (e.g. dependent parent). This would promote sufficient disclosure of INED links.

In addition, while Rule A.4.3 requires the reappointment of an INED whom has served on the board for nine years to be subject to a separate resolution to be approved by shareholders, we suggest that the Exchange can consider to explore further whether there should be a firm "stop" after nine years.

#### *Nomination Policy*

While no other markets have a requirement for disclosure of the nomination policy, we believe that such an exercise would serve as the right starting point in ensuring diversity amongst Board of Directors. Therefore, we are fully supportive of the requirement for an issuer to disclose their nomination policy adopted during the year.

---

<sup>2</sup> OECD. (2015) G20/OECD Principles of Corporate Governance OECD Report to G20 Finance Ministers and Central Bank Governors September 2015. Turkey.



#### *Director's attendance at meetings*

Being mindful of the need and the clear expectation of INEDs and NEDs to develop a balanced understanding of the views of shareholders, we are of the opinion that the latter part of the final sentence of CP A.6.7 should remain to set out the expectation of a director clearly but the part on attendance of general meetings should be removed.

We fully support the revision of CP A.2.7 to require INEDs to meet with the Chairman annually in the absence of the executives. This will remain beneficial as it allows for an informal and frank exchange of views regarding the company.

#### *Dividend Policy*

The dividend policy is important for analysts and investors as the expected dividend pay-out ratio is a key metric for investment decisions. Hence, we agree that issuers should be required to disclose their dividend policy in the annual report.

#### *Electronic Dissemination of Corporate Communications – Implied Consent*

We support in general using more environmental friendly and efficient means for corporate communication. We are conscious that the Hong Kong Companies Ordinance does not permit implied consent and a number of the Main Board and GEM issuers are Hong Kong incorporated. Nonetheless the Exchange may still consider to amend the Rule on the condition that there will be sufficient clarity provided on when implied consent can be adopted with due consideration on the legal environment where the issuers incorporated (e.g. Hong Kong incorporated issuers should not adopt it as an example).

#### **Conclusion**

We are supportive of enhancing Corporate Governance standards to ensure Hong Kong maintains its position as one of the leading capital markets. We see greater diversity on boards and increased disclosure will benefit Hong Kong capital markets by incorporating wider experience and bringing in different perspectives to allow more healthy debate that lead to more robust decision making.

We look forward to seeing the conclusion in relation to the Consultation paper on Review of the Corporate Governance Code and Related Listing Rules.

Yours faithfully

