

**BY EMAIL (response@hkex.com.hk)**

Corporate Communications Department  
Hong Kong Exchanges and Clearing Limited  
12th Floor, One International Finance Centre  
1 Harbour View Street  
Central, Hong Kong

18th March 2011

Re: Consultation Paper on  
Review of the Code on Corporate Governance  
Practices and Associated Listing Rules

Dear Sirs,

We refer to your Consultation Paper on Review of the Code on Corporate Governance Practices and Associated Listing Rules, issued December 2010 (Consultation Paper).

First, we appreciate your continual efforts in raising corporate governance standard among listed companies in Hong Kong. As one of the major financial centre in the world, Hong Kong must zealously maintain and improve its market quality and integrity. As noted in paragraph 1 of Executive Summary of the Consultation Paper, HKEx must stay vigilant and propose changes that are generally in line with best international practice.

We agree that an INED must take an active role in the issuer's affairs, obtain a general understanding of its operations and follow up anything that comes to their attention (paragraph 49, Consultation Paper). We also agree that an INED must dedicate sufficient time and attention to the issuer, with his professional knowledge and experience. As such it is critical that an INED keep the issuer informed of his other commitments and notify the issuer that he will have sufficient time to fulfill his obligations (paragraph 55, Consultation Paper). However, we have some concern about the statement in paragraph 55 that an INED should set a limit to his professional commitments portfolio. We are not clear about how this statement is to be construed. Naturally, if an INED is willing to contribute sufficient time and effort to the issuer, it goes without saying that he should critically assess the demands of his commitments. Otherwise, he must revise his commitment portfolio. We trust this is what the statement means.

In additions, we are in full agreement that the nomination committee is responsible to review regularly the time required for a director to perform his duty to the issuer and whether, as per an INED's annual confirmation that he has spent plenty of time on the issuer's operations, he has indeed done so (paragraph 53, Consultation Paper, and Questions 5 and 6). This would

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make clear the responsibility and accountability of both the INEDs and the nomination committees.

We do, however, have strong reservations about the proposal that the Code of Practice or the Listing Rules impose a rigid limit on the number of INED positions an individual may hold (paragraph 58, Consultation Paper and Question 11). As Hong Kong is a developed financial market, the rules and practices are in line with international standards. For other major market, there is no prescriptive restriction on the number of INED appointments. For a well developed and mature market, it is not the regulator's duty to dictate to market players the exact logistics as to how they should meet those standards. We note that the CSRC, the regulator of the Mainland market, has issued clear guidelines which state that, "in principle, independent directors can only hold concurrently the post of independent directors in five listed companies at a maximum" (paragraph 48, Consultation Paper). However, the Mainland is a developing market. In view of different market development level and sophistication between Hong Kong and the Mainland, we are not aspiring to follow the Mainland; it is the other way round. It would be going backwards if our market now adopted this type of prescriptive limit.

You have already set out clear standards for INEDs and nomination committees. Directors are required to ensure that they have sufficient time to meet their obligations (paragraph 40, Consultation Paper). You have also suggested to set out the expected time commitment for each directors in letters of appointment (paragraph 41, Consultation Paper), and that a director disclose to the board his other significant commitments at the time of his appointment and any subsequent changes to these commitments after his appointment (paragraph 41, 42, Consultation Paper). We consider these as a sufficient guiding principles to the market. In assessing an INED's ability to contribute sufficient time and effort to the issuer's business, the nomination committee must have consider the skills and expertise of the each INED, the skill mix and composition of the board and the general and specific needs of the issuer. This is a dynamic assessment which can only be made upon taking into account different variables. The imposition of a rigid formula to presupposes that if a director held more than certain number of appointments then he could not be devoting sufficient time and attention would not help this assessment. To the contrary, it seriously circumscribes the nomination committee's freedom in selecting the best and most suitable INED candidates. Moreover, the key issue is that whether an INED is putting sufficient time and attention to an issuer's business could not be judged in a mechanical manner. The assessment, at the end of the day, is qualitative, but not quantitative.

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If the concern is whether the INED has properly discharged his duties, or whether the nomination committee has performed its selection and assessment functions in a proper manner, then the solution should be put in place a framework whereby the INED and the Nomination Committee could be held to account for their performance. We concur on your recommendation that an INED should confirm annually to the nomination committee that he has spent sufficient time on the issuer's business (paragraph 55, Consultation Paper), and that the nomination committee should disclose in the issuer's corporate governance report that it has received and reviewed the INED's annual confirmations (paragraph 54, Consultation Paper), would provide the necessary accountability measures.

As published in the Hong Kong Economic Journal on 28<sup>th</sup> January 2011, Mr. Albert Cheng pointed out that imposing any such pre-set limit is not reasonable. Mr. Cheng drew an analogy with lawyers and accountants. All these professionals are required to devote sufficient time, care and attention to their clients. They are not bound by the number of clients/cases they may handle at any specific time. Imposing such restriction on them would not be sensible, and is completely against free market principles. We agree that the same logic would apply to INEDs.

Taking all the above factors into account, we would urge the HKEx not to set a rigid limit on the number of INED positions an individual may hold. Our pool of independent directors with sufficient capability is already very tight. HKEx should refrain from making that pool even tighter. That could end up hurting issuers and their shareholders.

We are happy for this response together with our name to be published as part of your consultation conclusions.

Yours faithfully,  
Midas International Holdings Limited

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