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?

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?

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?

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?

Please give reasons for your views.

<u>Question 4a</u>

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?

Please give reasons for your views.

<u>Question 4b</u>

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?

Please give reasons for your views.

<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?

Please give reasons for your views.

<u>Question 6a</u>

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?

Please give reasons for your views.

Question 6b

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)?

Please give reasons for your views.

Question 6c

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?

Please give reasons for your views.

Question 6d

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

Please give reasons for your views.

Question 7

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?

Please give reasons for your views.

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?

Please give reasons for your views.

Question 9

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

Please give reasons for your views.

Question 10

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.

Question 11

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.

The Remedy Project agrees with the HKEX's proposal to amend the Code to set out the linkage between CG and ESG in the introductory section, and to set out ESG risks in the context of risk management in the Code.

We further recommend that Principle D.2 and sections D.2.3 and D.2.4. of the Code are further amended to address the gaps in existing ESG risk management practices and ESG materiality assessments. Our proposed amendments are out in paragraph 15 below.

Emphasis of the linkage between CG and ESG highlights the importance of board accountability for ESG management

The board has a critical responsibility to ensure the company manages ESG issues that relate to its business. Pursuant to the UNGPs, a company's commitment to respect human rights "should be embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights". A key part of a director's fiduciary responsibility is the duty of care. Directors therefore need to inform themselves of the risks that arise from ESG issues and evaluate how the company's operations may impact ESG factors. Failure to do so may expose directors and officers to personal liability.

Evaluation of the ESG-related effects of a company's business should form part of its day-to-day compliance. As with other compliance programs, ESG risk management must be supported by board-level commitment, effective due diligence processes for risk detection, meaningful remediation procedures and proper disclosure. However, according to a survey conducted by BDO, only 54% of Hong Kong-listed companies surveyed disclosed information on board oversight of ESG issues in 2020. The Remedy Project therefore hopes that the proposed changes will lead to greater understanding, ownership and mainstreaming of ESG-related processes at the board-level and across all relevant business functions.

Express inclusion of material ESG risks in the risk management section of the Code emphasizes the importance of board oversight

As recognized by the HKEX and international guidance, senior management should assess the materiality of ESG risks faced by a business. However, only 60% of Hong Kong listed companies surveyed by BDO in 2020 disclosed that they had conducted a materiality assessment. Of those companies, only around 50% provided detailed disclosure on how ESG issues have been prioritized and presented. The lack of an adequate ESG materiality assessment, or the neglect of ESG issues may increase a company's exposure to ESG-related risks. Notably, in March 2019 a Hong Kong-listed company involved in the construction of a casino was implicated in a lawsuit involving labour abuse of Chinese migrant construction workers in Saipan. Yet, when the company published its 2019 ESG report in July 2020, it stated that its operations only had a minimal risk exposure to forced labour and that they considered this a non-material risk.

Significant improvement in the identification and management of material ESG risks is evidently required. The proposed change highlights board responsibility for evaluating and determining the nature and extent of ESG risks. The Remedy Project hopes that this will improve materiality mapping of ESG issues, and more importantly, encourage the implementation of company procedures to remedy (where identified) adverse ESG effects arising from business operations. This should involve, at the very least, meaningful human rights due diligence processes, a company-wide commitment to a human rights policy, effective and accessible grievance mechanisms to remediate adverse impacts, and meaningful engagement with all stakeholders in the ESG risk management process. The Operational Guidelines for Businesses on Remediation of Human Rights Grievances, authored by The Remedy Project in partnership with the United Nations International Organization for Migration, provide a structure for Hong Kong listed companies to develop these mechanisms to remediate grievances.

To address the gaps in existing ESG risk management practices and materiality assessments, The Remedy Project recommends that Principle D.2 and sections D.2.3 and D.2.4. of the Code are further amended as follows (The Remedy Project's additional changes are shown in [square brackets]):

Principle D.2

The board is responsible for evaluating and determining the nature and extent of the risks it is willing to take in achieving the issuer's strategic objectives, and ensuring that the issuer establishes and maintains appropriate and effective risk management and internal control systems. Such risks would include, amongst others, material risks relating to ESG (please refer to the ESG Reporting Guide in Appendix 27 to the Exchange Listing Rules for further information). The board should oversee management in the design, implementation and monitoring of the risk management and internal control systems[, including the identification, evaluation and management of material ESG-related issues] and management should provide a confirmation to the board on the effectiveness of these systems.

Section D.2.3

The board's annual review should, in particular, consider:

(a) the changes, since the last annual review, in the nature and extent of significant risks (including ESG risks), and the issuer's ability to respond to changes in its business and the external environment;

(b) the scope and quality of management's ongoing monitoring of risks (including ESG risks) and of the internal control systems, and where applicable, the work of its internal audit function and other assurance providers;

(c) the extent and frequency of communication of monitoring results to the board (or board committee(s)) which enables it to assess control of the issuer and the effectiveness of risk management[, including whether key performance indicators used to measure ESG performance are fit for purpose;]

(d) significant control failings or weaknesses that have been identified during the period[, including any shortcomings in ESG compliance in the past year, steps taken to remediate failures and prevent future non-compliance.] Also, the extent to which they have resulted in unforeseen outcomes or contingencies that have had, could have had, or may in the future have, a material impact on the issuer's financial performance or condition; and

(e) the effectiveness of the issuer's processes for financial reporting and Exchange Listing Rule compliance.

Section D.2.4

Issuers should disclose, in the Corporate Governance Report, a narrative statement on how they have complied with the risk management and internal control code provisions during the reporting period. In particular, they should disclose:

(a) the process used to identify, evaluate and manage significant risks [(including ESG risks and the process and criteria used to assess material ESG factors)];

(b) the main features of the risk management and internal control systems;

(c) an acknowledgement by the board that it is responsible for the risk management and internal control systems and reviewing their effectiveness. It should also explain that such systems are designed to manage rather than eliminate the risk of failure to achieve business objectives, and can only provide reasonable and not absolute assurance against material misstatement or loss;

(d) the process used to review the effectiveness of the risk management and internal control systems and to resolve material internal control defects; and

(e) the procedures and internal controls for the handling and dissemination of inside information.

<u>Question 12</u>

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.

The Remedy Project supports the HKEX's proposal to require publication of the annual report and the ESG report at the same time.

Simultaneous publication reaffirms the importance of ESG considerations in the development of overall business strategy

ESG issues can no longer be relegated to the side lines. Risks from environmental and social factors can fundamentally affect a company's core business. The significant financial, legal, and reputational risks are illustrated by the ESG-related events recently reported in the financial press. A shipment owned by a Hong Kong and Tokyo-listed fashion company was recently impounded by U.S. Customs and Border Protection following allegations of forced labour in its supply chain. As noted above, a Dutch court has ordered Royal Dutch Shell to significantly accelerate planned carbon emission cuts. Allegations of forced labour practices at Malaysia-listed Top Glove Corp Bhd. have allegedly affected the company's planned listing in Hong Kong.

Moreover, ESG initiatives at corporations can drive better financial performance through improved risk management and increased stakeholder engagement, especially in the long-run. A review of over 1,000 studies published on ESG performance and financial performance found a positive relationship between ESG and financial performance (measured by operational metrics such as return on equity, return on assets or stock price) for 58% of studies. Conversely, companies with a known history of ESG incidents exhibit "a four-factor alpha of negative 3.5% per year, even when controlling for other risk factors". However, ESG disclosure on its own does not drive financial performance – measuring and disclosing ESG metrics without actual implementation of an ESG risk management strategy is ineffective.

Requiring issuers to publish ESG reports at the same time as their annual reports affirms the fact that ESG considerations should form part of a company's annual strategic planning. The Remedy Project considers this a small but symbolic step towards the integration of ESG issues into the overall financial and business strategy of Hong Kong-listed companies.

Simultaneous publication facilitates proper shareholder discussion of ESG issues at the company's annual general meeting

ESG reporting has become part of the key information relied on by investors to make investment decisions about their portfolio companies. Large asset managers, and investor-led and company-led coalitions are increasingly vocal in urging companies to improve ESG strategies both in Hong Kong and abroad. Shareholder activism and conversations about corporate responsibility to uphold human rights principles are now mainstream. For example, BlackRock's Head of Investment Stewardship in APAC, Amar Gill, recently stated that BlackRock would be likely to vote against the re-election of company directors that fail to set climate targets. Chevron Corp.'s shareholders voted for a proposal to reduce emissions from the company's customers despite a board recommendation to reject the proposal. At Exxon Mobil, shareholders BlackRock, Vanguard and State Street voted against Exxon's leadership team by supporting activist hedge fund, Engine No. 1 to appoint three directors to Exxon's board.

The simultaneous publication of ESG reports and annual reports will enable shareholders (and the public) to obtain a fuller picture of a company's overall performance, well ahead of the company's annual general meeting. The Remedy Project welcomes this proposed change, which will facilitate shareholders' ability to make investment decisions that include an assessment of both the company's financial and ESG performance.

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?

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?

Please give reasons for your views.

Question 15a

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?

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?

Please give reasons for your views.