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?

Yes

Please give reasons for your views.

We welcome this proposal and believe that corporate culture set by the board, with alignment throughout an organisation is essential for delivering on its purpose, value and strategy.

We note a Harvard Business Review article (https://hbr.org/2018/01/the-leaders-guide-to-corporate-culture) which highlighted that "when aligned with strategy and leadership, a strong culture drives positive organizational outcomes", whilst the opposite is true, where "a strong culture can be a significant liability when it is misaligned with strategy".

Nevertheless, corporate culture can be an abstract and intangible concept for companies, and we believe the market would benefit from additional HKEX guidance on how boards should assess and monitor culture and evaluate their success in alignment with corporate purpose, value and strategy.

We acknowledge that corporate culture will encapsulate different characteristics for different organisations. As a minimum, we believe that culture should include business ethics, conduct and behaviour, referencing the International Corporate Governance Network's (ICGN) Global Governance Principles (2017), Principle 4 on corporate culture. In addition to anti-corruption and whistleblowing policies, companies should disclose, where appropriate, company policies on political engagement, as well as lobbying activities, affiliations and donations to political parties or individuals, both in domestic and overseas markets.

To encourage and support this proposal being adopted by companies both in substance and in form (i.e. avoid this proposal becoming a tick-box exercise), we welcome the suggested disclosures under paragraph 54, as well as examples of both good practices and malpractices.

Question 2a

Do you agree with our proposal to introduce a CP requiring establishment of an anti-corruption policy?

Yes

Please give reasons for your views.

We agree with HKEX's proposals on anti-corruption and whistleblowing policies – both are important components in establishing a healthy corporate culture.

In addition, we believe that:

- Companies should also be required to report on the number of incidents in the past year relating to corruption, their nature, how they were handled, and the outcome.

- The whistleblowing mechanism should be made easily accessible, and communicated to the company's employees and other stakeholders in a manner that there should be no fear of retribution. As such, the whistleblowing mechanism should ideally be independent from the company, which cannot be guaranteed if its operations and oversight are conducted by an audit (or other designated) committee that is not 100% independent. This concern is particularly relevant where there is a dominant family/state controlling shareholder on the board.

- Companies should report on the number of complaints received through the whistleblowing mechanism, their nature, how they were handled, and the outcome.

<u>Question 2b</u>

Do you agree with our proposal to upgrade a Recommended Best Practice ("RBP") to CP requiring establishment of a whistleblowing policy?

Yes

Please give reasons for your views.

Please see our response to Question 2(a).

<u>Question 3</u>

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

Please give reasons for your views.

We believe that it is important for companies to have access to a diverse range of independent views through having diverse and majority-independent boards. We therefore welcome HKEX's proposal, although we also wish to clarify whether HKEX sees gaps in the current regime, or challenges for boards to access independent views.

One key issue we have observed is that a large number of Hong Kong listed companies are controlled or majority owned by family, founder(s) or state shareholders. As such, an independent non-executive director (INED) appointed by the controlling shareholder may have limited scope and power to provide independent views, especially if such views were controversial. In these companies the INEDs would tend to be accountable to the controlling shareholder (i.e. the one who appointed the INED) rather than all shareholders including minority investors. This influence, whether explicit or implicit, can be significant and would impair the independence and objectivity of the INEDs.

From our experience in engaging with companies on board composition, companies often lack the appetite for change and or to adopt good corporate governance principles that set out to protect all shareholders including minority investors. Instead companies often fall back on standard statements that are non-specific, non-binding, and difficult to hold to account. Companies often cite the lack of talent, or their ability to find suitable candidates, as a key challenge for increasing the number of INEDs. Yet many of them limit their search to who they already know, rather than using alternative channels or more innovative ways to identify INED candidates. Most companies we have engaged with, have not articulated a clear director refreshment or succession plan. This raises further questions on the effectiveness of nomination committees and the majority INEDs that make up these committees.

We believe there are corporate governance principles that can help to address this unique challenge in Hong Kong (and across Asia for other majority-owned companies), and would urge the HKEX to consider these in this Corporate Governance Code update.

Firstly, we believe that the board should have a majority of INEDs. Although HKEX already require a minimum of one-third board independence, we believe that a majority (more than 50%) independent board would be better placed to voice independent and alternative views, provide more objective oversight, and bring fresh perspectives and a variety of vital skills and experiences from outside the company and industry, ultimately providing better protection for minority investors. Whilst INEDs are particularly important for minority shareholders, they represent the interest of all shareholders and should not be regarded as a threat to large or controlling shareholders. Many European markets, as well as India (and soon Singapore), already have majority board independence provisions.

Secondly, the board chairperson should also be independent so that they can lead and facilitate discussions and bring disparate views together in an objective way. This is particularly important in controlled companies as it allows diverging opinions to be listened to and not dominated by the controlling interest. The independent chairperson should be able to stand back and view critical decisions from a different perspective.

We would also encourage HKEX to require boards to appoint a senior or lead INED, as outlined in paragraphs 30 and 101 of the consultation paper. This is to provide a sounding board for the chairperson and directors alike, as well as serve as an intermediary with the shareholders including minority investors. While investor communications will remain predominantly with investor relations (IR), the lead INED is necessary to provide impartial non-executive insights into how corporate strategy, major decisions and transactions are discussed and overseen at the board level.

Finally, we would encourage HKEX to introduce a requirement for board effectiveness reviews. These are highlighted in provision 21 of the UK Corporate Governance Code 2018, for example. If conducted rigorously and independently (e.g. using an external party), such a review can provide valuable insights into the board's dynamics, strengths, gaps and any improvement points. The disclosure of findings from such reviews would also provide valuable insights and confidence to investors that the company is actively considering the board's effectiveness at discharging its fiduciary duties, particularly for controlled/majority owned companies.

Given the compliance mindset of many Hong Kong listed companies, we urge the HKEX to consider our recommendations set out above for inclusion as code provisions, rather than leaving companies with the option to default to minimum compliance. Our recommendations are in line with international codes such as the UK Corporate Governance Code 2018 and the ICGN Global Governance Principles (2017), and would bring Hong Kong closer to global leaders and regional peers in corporate governance. As the code is applied on a 'comply or explain' basis, it is still open to listed companies to explain why a particular provision should not apply to them or may be implemented over time.

As with other statements, it is easy for companies to publish a policy to ensure independent views are available to the board – the real challenge is how such a policy would be meaningfully implemented in practice. Requiring majority independent representation is the most effective means of ensuring that all shareholders' interests are represented. We welcome the proposal to have an annual review of the implementation and effectiveness of a policy on the availability of independent views, and encourage the HKEX to provide detailed guidance and good practice examples (whether domestic or overseas) to support companies to implement this.

Question 4a

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?

Yes

Please give reasons for your views.

We agree with both proposals which we believe will strengthen board independence, particularly the explicit requirement of independent shareholder approval (i.e. majority/controlling shareholder cannot vote on the re-election of a Long Serving director). We also agree that the proposed additional disclosures will provide valuable insights into the factors considered by the board to retain the Long Serving director, as well as the board's discussions, process and rationale for doing so.

In addition, in the spirit of addressing the risks and improving the long term sustainability of a company as outlined in paragraphs 68-72, we believe that Long Serving directors should be re-elected annually, rather than every three years as per current CP B.2.2. We would urge the HKEX to be more explicit on this requirement as part of the revised Code Provision.

Apart from the issues already highlighted in the consultation paper, we also believe that retaining too many Long Serving directors will impede board succession and the introduction of fresh independent views to the board, since companies have no impetus or incentive to introduce new INEDs if they already meet the minimum threshold, even if all/most of the existing INEDs are Long Serving. We believe that board tenure should be a factor when assessing the independence of a director, with the presumption that directors who have served beyond a certain time would no longer be regarded as independent. This would not preclude long-serving directors on the board where they had particular skills or knowledge valued by the company; rather it would mean that their presence alongside other non-independent directors would have to be balanced by independent directors.

As noted in our response to Question 3, many companies we have engaged with cite the lack of talent as a reason for not being able to identify INED candidates, sometimes leading to Long Serving directors. However, we do not believe that this is a valid reason for having a large number of Long Serving directors (sometimes multiple INEDs serving for longer than 15 years). This raises questions on the company's board succession planning and the effectiveness of nomination committees. As such, we believe HKEX's proposal here is of significant importance to change the status quo.

Question 4b

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?

Yes

Please give reasons for your views.

We agree with this proposal, however to avoid this becoming a tick-box exercise where companies might simply appoint a "professional INED" with many other roles, we would encourage HKEX to also include in the Code Provision the requirement for companies to disclose why the new INED has been appointed, the process and factors considered in the appointment.

Whilst there is an important role for skilled and experienced outside directors whose quality of contribution and independence are valued by all investors, some outside directors have too many board roles for investors to be confident that they are making a valued contribution to all of these. As a way to address the issue of over-committed "professional INEDs", we would urge HKEX to require companies to disclose the number of directorships, both executive and non-executive, held by each INED on a named basis. We encourage HKEX to issue guidance on a maximum number of such roles, with executive roles having additional weight. We note that the number of board roles is increasingly a factor in investor voting on director re-elections.

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

Please give reasons for your views.

We agree with this proposal, however we would propose that this is introduced as a Code Provision on a comply-or-explain basis in order to strengthen the objectivity and independence of INEDs. Companies should transparently disclose the rationale and purpose for granting performance-linked equity-based remuneration to an independent director. This does not preclude modest equity-based remuneration which does not have a performance link.

We believe there are other important factors to consider on INED remuneration:

- INED remuneration should be uniform for their different roles within a given organisation. Even if INEDs may have a diverse background, the expectations on each INED should be uniform. Where an INED takes on additional responsibilities such as playing the senior/lead INED role, then this should also be reflected in the remuneration.

- INED remuneration should be commensurate with their responsibilities and accountabilities, otherwise this can give rise to issues raised in previous questions, such as the challenge of identifying talented individuals with the right skills, experiences, network and the willingness take on the risks (reputational or otherwise) by serving as an INED; and "professional INEDs" taking on multiple directorships.

Question 6a

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

Please give reasons for your views.

We agree with this proposal, and that gender is one of the most fundamental aspects of diversity. We share the concerns that over 30% of Hong Kong issuers have no female representation, while another 37% only have one female director, as highlighted in the consultation paper. While diversity is not limited to gender and should be achieved through a multitude of factors, we agree that it is necessary and important for HKEX to highlight this. We would encourage HKEX to also highlight the benefits of a gender-diverse board and any supporting evidence.

We believe that in the long run all companies should aspire to having a meritocratic board that is balanced in terms of gender. Academic studies have shown that more gender diverse boards make better decisions, have better attendance, and are associated with positive financial results. Improving gender diversity on the board can also be a catalyst for improving gender diversity at all levels of a company, which could also have positive impacts on financial returns. Indeed, our preference is to see company boards achieve one-third female representation in the short to medium term, and in time we believe they will aspire to parity.

In our experience of engaging with companies in other markets, we have observed that organisations have taken active steps to improve gender diversity in their boards and across their organisations. Examples include mentoring opportunities for promising future female leaders; mandating unconscious bias training for all board officers; developing detailed gender diversity guidelines in the nomination and remuneration committee charters; & monitoring and promotion of diversity & inclusion annual diversity assessment of the board.

<u>Question 6b</u>

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)?

Yes

Please give reasons for your views.

We agree with this proposal, however to avoid this becoming a tick-box exercise, we would suggest that companies should provide qualitative disclosures on the process of identifying the candidates for the under-represented gender, their work in talent pipeline development and how gender is included, and any initiatives or partnerships with other industry peers, academic institutions, etc for the promotion of gender diversity.

<u>Question 6c</u>

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

Please give reasons for your views.

We agree with this proposal, and would add that companies should provide disclosures on how they have conducted such a review, and its findings and recommendations.

If possible, we would like to add that this review of board diversity implementation should be part of a broader board effectiveness review as discussed in our response to Question 3.

<u>Question 6d</u>

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

Yes

Please give reasons for your views.

We agree directors' gender information should be included, however we also believe that the forms should also include other options, since some regard gender as non-binary.

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?

Yes

Please give reasons for your views.

We share the view that boards should establish nomination committees (NC) comprised of a majority of INEDs, and excluding executive directors. The NC plays a vital role in the succession planning of board and senior management positions and the oversight of the recruitment and development of a diverse pipeline of candidates.

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

Please give reasons for your views.

We agree with this proposal, and would like to encourage the HKEX to require boards to appoint a senior or lead INED as suggested in paragraph 101-102 of the consultation paper, and in our response to Question 3. While investor communications will remain predominantly with investor relations (IR), the senior/lead INED serves as a key communication channel with minority investors to provide impartial non-executive insight into how corporate strategy, major decisions and transactions are discussed and overseen at the board level, which would not otherwise be available through regular IR communications.

We believe that the concerns about creation of hierarchy amongst INEDs can be addressed by emphasising other senior roles such as committee chairs or even by rotating the INED taking up the lead/senior position, while concerns around identifying candidates willing to take up the position can also be addressed through improved compensation for the lead/senior INED role and by market initiatives to expand the INED candidate pool.

We do not share the reservation about a senior/lead INED's ability to enhance accountability. On the contrary, we believe that INEDs' accountability to all shareholders, including minority investors, will improve if there is a lead/senior INED responsible for direct, regular (e.g. annual) communication with investors on corporate strategy, major transactions, related party transactions, etc. The need for such a role and communication are even more acute for controlled/majority owned companies.

<u>Question 9</u>

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

Yes

Please give reasons for your views.

<u>Question 10</u>

Do you agree with our proposal to delete the CP that requires issuers to appoint non-executive directors for a specific term?

Yes

Please give reasons for your views.

We agree with the proposal to delete the Specific Term CP if this overlaps with the Rotation CP (as defined in paragraph 110 of the consultation paper). However, we would like to see that directors should be subject to retirement and re-election at least every year, rather than the current requirement of three years.

<u>Question 11</u>

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.

We agree. We would like to clarify if HKEX intends to combine the CG requirements (Appendix 14) and ESG requirements (Appendix 27) in future, since corporate governance and ESG are inextricably linked, and that corporate governance are one of the key pillars of ESG.

<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.

We agree. Aligning the publication of both reports improves the recognition of the linkage between CG and ESG issues.

<u>Question 13</u>

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?

No

Please give reasons for your views.

<u>Question 14</u>

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?

Yes

Please give reasons for your views.

To improve the communications between issuer and shareholders, issuers could increase the transparency of meetings/communications they have held with other investors/shareholders. This could take the form of disclosure of meetings held with a short description of issues discussed. For example, the Securities and Exchange Board of India (SEBI) announced in its press release PR No. 15/2021 on 25

March 2021 (https://www.sebi.gov.in/media/press-releases/mar-2021/sebi-board-meeting_49648.html) that listed entities will be required to provide the audio/video recordings of meetings with analysts and institutional investors on the website of the listed entity and exchanges before the trading day following the meeting, or within 24 hours of the meeting, whichever is earlier. Written transcripts of these meetings are required to be published within five working days. This new requirement is an enhancement of existing requirement to disclose the schedule and presentations of analyst/investor meetings.

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?

Yes

Please give reasons for your views.

Question 15b

Do you agree with our proposed implementation dates for proposals on Long Serving INED: the financial year commencing on or after 1 January 2023?

Yes

Please give reasons for your views.