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**Comments re: Consultation Paper on the**
**Review of Corporate Governance Code and Related Listing Rules**

We set out in this Memorandum our comments, which are put forward independently and do not represent any specific view of any of our clients or their views generally, on the Consultation Paper on the Review of Corporate Governance Code and Related Listing Rules (April 2021) (the "**Consultation**") prepared by the HKEX.

Given the increased importance of ESG information in understanding a company's performance, and how "Governance" is the equally important third key pillar of ESG, our comments will focus mainly on the linkage between the Corporate Governance Code[1] ("**CG Code**") and the ESG Reporting Guide[2] ("**ESG Guide**"), both issued by HKEX and applicable to listed companies in Hong Kong. Specifically:

1. We applaud the proposal to have the ESG reports to be published at the same time as the annual reports, such that the ESG information is published simultaneously with a company's financial information, which highlights the interdependency between financial and non-financial matters, and thus allowing the board, as well as shareholders and investors, to assess a company's performance more holistically and comprehensively. (Question 12)

   We welcome your proposed elaboration of the linkage between CG and ESG by setting out the relationship between the two in the introductory section, and specifically including ESG risks in the context of risk management in the CG Code. (Question 11)

   However, given this Consultation's focus on company culture and how this should be aligned with a company's purpose, value and strategy, we suggest that ESG information should also be considered a critical element of company culture and part of the "purpose, value and strategy" of the company, and not just a category under "risks".

   We propose in line with international trends and data that increasingly reflect ESG as more than a risk consideration, but rather also opportunities and signs of a high-performing company, that ESG should not be refined to just being a risk consideration in the CG Code but also mentioned as forming part of the "purpose, value and strategy" of a company. (Question 1)

   Specifically, in the introductory section to CG Code, ESG should be considered both risks and opportunities, and even factors critical for the success of a company. (Question 11(a)). We suggest potential amendment of the section as underlined:

[1] Appendix 14 Main Board Listing Rules; Appendix 15 GEM Listing Rules
[2] Appendix 27 Main Board Listing Rules; Appendix 20 GEM Listing Rules

**"Linkage between Corporate Governance and Environmental, Social and Governance ("ESG")**

Corporate governance provides the framework within which the board forms their decisions and build their businesses. The entire board should be focusing on creating long-term sustainable growth for shareholders and delivering long-term value to all stakeholders. An effective corporate governance structure allows issuers to have a better understanding and evaluate and manage risks ~~(including environmental and social risks)~~ and opportunities. The ESG Reporting Guide set out in Appendix 27 to the Exchange Listing Rules provides a framework for issuers to identify and consider what <u>ESG risks and opportunities</u> ~~environmental risks and social risks~~ may be material to them. The board should be responsible for governance of ESG matters to ensure oversight of ESG matters, as well as assessment and management of material environmental and social risks. Issuers are required to disclose environmental and social matters in ESG reports in accordance with the ESG Reporting Guide."

2. We welcome the introduction of a new CP (Code Provision) requiring establishment of an anti-corruption policy, and the upgrading of a RBP (Recommended Best Practice) to CP requiring the establishment of a whistleblowing policy. (Question 2)

   We also welcome the highlighting of board diversity in this Consultation, and we will provide more detailed response on board diversity further below. (Question 6)

   Noting that there are overlapping requirements and information required for both the Corporate Governance Report and the ESG Report (e.g. in relation to diversity (Aspect B1, ESG Report) and anti-corruption (Aspect B7, ESG Report)), we propose that HKEX issues further guidance on how issuers could integrate their corporate governance compliance with their ESG management approach and strategy going forward, given how G is after all a pillar of ESG.

3. On board diversity we answer affirmatively to Questions 6(a) and (c), and urge a cautious approach towards the disclosure of directors' gender information under Question 6(d) and for the relevant forms to provide non-binary options.

   We agree with the proposal to Question 6(b). A comparative review shows that increasingly jurisdictions around the world are introducing laws and regulations mandating a certain percentage of female directors on the board of listed companies – or even broadening beyond listed companies (e.g. France) and going beyond gender diversity to cover underrepresented minorities (e.g. California, United States). Usually a timeline would be provided too for companies to reach such targets.

   While not representing any of our clients in making this submission, we understand from our discussions with some listed issuers, any changes to the composition of the board would take time to implement, as companies try to balance between diverse representation and finding the right candidates and making sure that merit is central to appointment.

We agree with HKEX adding that diversity is not considered to be achieved by having a single gender board in the note of the Listing Rules, and that a three-year transition period is sufficient. We also note that HKEX did not mandate a percentage of board diversity in the CG Code, which is an approach we agree with in light of our comments in the preceding paragraph.

However, we suggest HKEX to provide some international best practice or aspirational target of a certain percentage, which we believe would provide more clarity for issuers who want to do more than bare minimum, and would provide a necessary push to help speed up board diversity in Hong Kong, given how low the figures currently are. According to figures provided in the Consultation, only 12.7% of Hong Kong listed companies' directorship was held by women, and around 32.1% of issuers have no female directors on their boards at all.

If you would like to discuss any of the above issues, please feel free to contact our partner Penelope Shen [redacted] and associate Tze-wei Ng [redacted].

**Stephenson Harwood**
**18 June 2021**