75th CHARTERED GOVERNANCE Hong Kong YEARS ANNIVERSARY

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[redacted]

By Email ([redacted])
Ms Katherine Ng
Head of Listing
Hong Kong Exchanges and Clearing Limited

26 August 2024

Dear Katherine

Consultation Paper on Review of Corporate Governance Code and Related Listing Rules

With respect to the HKCGI submission on the Consultation Paper dated 8 August 2024, we wish to clarify certain aspects of our submission regarding four of the proposals.

At the outset, as a governance institute, we are, in principle, supportive of the proposals under the Consultation Paper to enhance the governance of listed companies and reinforce Hong Kong's position as a leading international finance centre.

Our submission was intended to reflect some implementation concerns. These can be addressed, for example, by additional guidance, market education, and allowing more time for proposal implementation, which we will explain further in this letter.

Question 1 - Lead INEDs

The appointment of lead INEDs provides an additional mechanism for investors and stakeholders to approach a listed company without an independent board chair. The aim is to facilitate and strengthen investor and stakeholder communication in good governance and has been called for by international investors.

To address some implementation concerns raised in our submission, HKEX could consider providing more time to implement the proposal and practical regulatory guidance for market education, focusing on lead INEDs' roles and responsibilities for listed companies. HKCGI will support the initiative through CPD training in the marketplace.

Question 2 - Continuous Professional Development (CPD) for Directors

The Institute supports the idea of continuous professional development for first-time directors, which the company secretary, as a governance professional, is normally responsible for providing. However, we would suggest that 15 hours (rather than 24) would be sufficient. It is also worth considering allowing some recognition for directors from reputable jurisdictions, such as the FTSE, regarding this requirement.

As noted in our submission, the more important issue is that we suggest mandating or recommending a specific number of training hours (8 would be our suggestion). In the meantime, HKCGI is assembling training materials on the five identified subject areas for launch by the end of the year.

Question 4 - Board Performance Reviews

HKCGI supports board evaluation and has previously issued a guidance note on the topic. We, therefore, agree with the proposal to upgrade the current RBP to a CP.

However, instead of requiring a review every two years, three years would be a better timeline to allow changes made at the board level following an evaluation exercise to be fully implemented before successive evaluations.

Again, HKCGI, on its part, will continue to provide more CPD training on board evaluation.

Question 8 - Nine Year INED Hard Cap

From a governance perspective, the proposed nine-year hard cap aligns with international best practices. It addresses the concern that an INED might become less independent after long service.

In our submission, we have set out some concerns. These, again, could be addressed through additional guidance, market education, and allowing more time for proposal implementation.

Should you have any further questions, please get in touch with me or [redacted] at [redacted].

For and on behalf of
The Hong Kong Chartered Governance Institute

[redacted]

The Hong Kong Chartered Governance Institute

Online Submission

The Stock Exchange of Hong Kong Limited (Exchange)

Consultation on
Review of Corporate Governance Code and Related Listing Rules

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8 August 2024

Consultation Paper on Review of Corporate Governance Code and Related Listing Rules
[Words and expressions used herein shall have the meanings set out under the proposed Consultation Paper.]

About HKCGI

The Hong Kong Chartered Governance Institute (**HKCGI**), formerly known as The Hong Kong Institute of Chartered Secretaries (HKICS), is the only qualifying institution in the Chinese mainland and Hong Kong for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 75 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extends to all of CGI's nine divisions, with about 40,000 members and students worldwide. HKCGI is one of the fastest-growing divisions of CGI, having over 10,000 members, graduates and students with significant representations within listed companies and other cross-industry governance functions.

Believing that better governance leads to better decisions for a better world, HKCGI's mission is to advance governance in commerce, industry, and public affairs through education, thought leadership, advocacy, and engagement with members and the broader community. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach that considers all stakeholders' interests.

Consultation Questions

Question 1	Do you agree with our proposal to introduce a new CP requiring issuers without an independent board chair to designate one INED as a Lead INED to enhance engagement with investors and shareholders? Please provide reasons for your views.

It is necessary to approach the issue from the standpoint of applied governance. Members' feedback is that interactions between INEDs, investors, and shareholders are limited. Any assumption that having a Lead INED would facilitate investor and stakeholder communication is questionable.

Also, as many Hong Kong-listed businesses have concentrated ownership within families or the Chinese state, having a Lead INED might be seen as certain individuals being first among the INEDs. Apart from the cultural sensitivity, this does not fit well with all directors being equal in roles and responsibilities under a unitary board.

If the Lead INED is intended to contribute to some governance checks and balances to the Chairman, who is not an INED, this will be of marginal value from experiences shared by those groups with overseas listed issuers requiring the appointment of Lead INEDs.

Overall, having Lead INEDs to support investor and shareholder communication when the executive leads the day-to-day running of the issuer's business requires more analysis grounded in empirical evidence that shows how the appointment of a Lead INED will contribute to investor and stakeholder engagement.

Question 2	Regarding continuous professional development for directors, do you agree with our proposals to: a) Make continuous professional development mandatory for all existing directors, without specifying a minimum number of training hours? b) Require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment? c) Define "First-time Directors" to mean directors who (i) are appointed as a director of an issuer listed on the Exchange for the first time; or (ii) have not served as a director of an issuer listed on the Exchange for a period of three years or more prior to their appointment? d) (d) Specify the specific topics that must be covered under the continuous professional development requirement? Please provide reasons for your views.
Question 3	Do you agree with the proposed consequential changes to Principle C.1 and CP C.1.1 of the CG Code? Please provide reasons for your views.

Question 2(a). The main issue from members' feedback identified was that 24 hours was inordinately long for onboarding a director. There were some suggestions that the onboarding training for 15 hours may be more appropriate during the first 18 months.

Another concern was that the five-topic heading was unduly prescriptive. The overall sentiments are that there should be some leeway given to listed issuers to structure training on the most important issues that contribute to the effective discharge of the role and responsibilities of directors, compliance with regulations, and business matters of particular concern to the issuer, for example, sustainability disclosures.

There was a concern that if overseas directorships were not considered on the issue of whether a director is a first-time director, this would reduce the director talent pool. For example, if a director serves in an FTSE company, the INED experience might be relevant. Therefore, director experience from certain well-respected jurisdictions should be considered relevant.

On continuing training for directors, likewise, training on all five topics is unduly prescriptive. It might also engender a tick-the-box mentality to squeeze in all the topics instead of areas of general and particular concern to the listed issuer.

If the five topic areas are to be stated, we are not opposed to the suggested topics being inclusive guidance against prescriptive requirements.

In all, for continuing director training, setting a specified number of hours would be a much easier arrangement; for example, 8 hours per year would be a better approach. This would leave the company secretary to help design the relevant courses, supported by our Institute's tailor-made CPD courses, where appropriate. This will be a better yardstick for directors' compliance.

We also submit that, with their professional training in governance and the requirement for annual continued professional development, HKCGI members' annual training hours should be counted towards the mandated training requirement following their first appointment as a director and, whether in relation to their first or a subsequent appointment, should satisfy the requirement for training in the subjects specified in paragraph 47 (a) to (d), while recognising that additional training on specific industry, bustiness trends and strategies (as set out under paragraph 47 (e) of the Consultation Paper) will still be required.

Question 2(b). See answer 2(a).

Question 2(c). See answer 2(a).

Question 2(d). See answer 2(a).

Question 3. See answer 2(a).

Question 4	Do you agree with our proposal to upgrade the current RBP to a CP requiring issuers to conduct regular board performance reviews at least

	every two years and make disclosure as set out in CP B.1.4? Please provide reasons for your views.

Members' feedback is that within two years, there might not be any significant changes in the business and strategy of an issuer, and three years will be more appropriate. Importantly, this will allow time for changes that might have taken place to settle for a more effective and meaningful evaluation.

Our Institute has also provided guidelines for board evaluation and will be delighted if this could be referred to under any guidance on the topic.

Question 5	Do you agree with our proposal to introduce a new CP requiring issuers to maintain a board skills matrix and make disclosure set out in CP B.1.5? Please provide reasons for your views.

Yes. No significant concern was raised about this proposal.

Question 6	In relation to our proposal to introduce a "hard cap" of six listed issuer directorships that INEDs may hold, do you agree: a) With the hard cap to ensure that INEDs are able to devote sufficient time to carry out the work of the listed issuers? b) With the proposed three-year transition period to implement the hard cap? Please provide reasons for your views.
Question 7	Do you agree with the proposal to introduce a new MDR to require the nomination committee to annually assess and disclose its assessment of each director's time commitment and contribution to the board? Please provide reasons for your views.

Question 6(a). Yes. The over-boarding issue affects 23 directors, making the hard cap insignificant from the applied governance perspective. This, coupled with a three-year grace period, appears acceptable.

Question 6(b). Yes. See answer 6(a).

Question 7. Yes. On the MDR regarding the director providing sufficient time to address issues relating to the board, how the director deals with outside commitments is a reasonable issue to consider. There should be some conversation between the nomination committee and INEDs, especially where there are red flags, for example, missed director meetings, slowness in responding, and the quality of input not being as expected. We will be delighted to support the efforts with training designed to help the nomination committee and as general guidance.

Question 8	In relation to our proposal to introduce a "hard cap" of nine years on the tenure of INEDs, beyond which an INED will no longer be considered to be independent, do you agree: a) With the proposed hard cap to strengthen board independence? b) That a person can be re-considered as an INED of the same issuer after a two-year cooling-off period? c) With the proposed three-year transition period in respect of the implementation of the hard cap? Please provide reasons for your views.
Question 9	Do you agree with the proposal to require all issuers to disclose the length of tenure of each director in the CG Report? Please provide reasons for your views.

Question 8(a). This was the issue that raised the most concern.

From the applied governance perspective, whether an INED should be considered independent should be based on independence of mind and not the number of years they served. As such, we do not find the rationale for the proposed changes to the Listing Rules compelling. For example, members' feedback included those who asserted they had fiercely independent long-serving INEDs in their listed companies. The rapport gained over the years contributed, instead of detracted, their independence at board deliberations.

Additionally, we have feedback from members, particularly from prominent Chinese enterprises, which suggests that the notion that there is a ready pool of INEDs may not be entirely accurate when considering their suitability in the context of a world where global relations are in a state of flux and candidates need to satisfy multi-jurisdictional concerns. Identifying a suitable candidate is long and arduous and can create real difficulties. In this case, there will be a need to explain why long-standing INEDs, who have demonstrated their effectiveness, should be regarded as less independent than newly appointed ones, adding to the difficulties.

An alternative applied governance approach considers the matter from the groupthink perspective. We have members' feedback that there should be an assessment of the INED tenure of the board as a whole. If, on average, this exceeds nine years, a new INED could be brought in to provide fresh perspectives. Once this is done, the process could be repeated every three years. There will still be challenges, but at least the rationale to contribute fresh perspectives will be more persuasive.

Question 8(b). Yes. Subject to answer 8(a).

Question 8(c). Yes. Subject to answer 8(a).

Question 9. Yes. Subject to answer 8(a).

Question 10	Do you agree with our proposal to introduce a CP requiring issuers to have at least one director of a different gender on the nomination committee? Please provide reasons for your views.
Question 11	Do you agree with our proposal to introduce a Listing Rule to require issuers to have and disclose a diversity policy for their workforce (including senior management)? Please provide reasons for your views.
Question 12	Do you agree with our proposal to upgrade from a CP to a MDR the requirement on the annual review of the implementation of an issuer's board diversity policy? Please provide reasons for your views.
Question 13	Do you agree with our proposal to require as a revised MDR separate disclosure of the gender ratio of: (i) senior management; and (ii) the workforce (excluding senior management) in the CG Report? Please provide reasons for your views.
Question 14	Do you agree with our proposal to codify the arrangements during temporary deviations from the requirement for issuers to have directors of different genders on the board as set out in draft MB Rule 13.92(2) in Appendix I? Please provide reasons for your views.

Question 10. Yes. To date, we have supported HKEX's steps towards gender equality.

Question 11. Yes. To date, we have supported HKEX's steps towards gender equality.

Question 12. Yes. To date, we have supported HKEX's steps towards gender equality.

Question 13. Yes. To date, we have supported HKEX's steps towards gender equality.

Question 14. Yes. To date, we have supported HKEX's steps towards gender equality.

Question 15	Do you agree with our proposal to: a) emphasise in Principle D.2 the board's responsibility for the issuer's risk management and internal controls and for the (at least) annual reviews of the effectiveness of the risk management and internal control systems; and b) upgrade the requirement to conduct (at least) annual reviews of the effectiveness of the issuer's risk management and internal control systems to mandatory and require the disclosures set out in MDR paragraph H? Please provide reasons for your views.
Question 16	Do you agree with our proposal to refine the existing CPs in section D.2 of the CG Code setting out the scope of the (at least) annual reviews of the risk management and internal control systems? Please provide reasons for your views.

Question 15(a). Yes. No concerns were raised about these matters.

Question 15(b). Yes. No concerns were raised about these matters.

Question 16. Yes. No concerns were raised about this matter.

Question 17	Do you agree with our proposal to introduce a new MDR requiring specific disclosure of the issuer's policy on payment of dividends and the board's dividend decisions during the reporting period? Please provide reasons for your views.

Question 17. Yes. No concerns were raised about this matter.

Question 18	Do you agree with our proposal to introduce a Listing Rule requirement for issuers to set a record date to determine the identity of security holders eligible to attend and vote at a general meeting or to receive entitlements? Please provide reasons for your views.

Question 18. Yes. No concerns were raised about this matter.

Question 19	Do you agree with our proposal to codify our recommended disclosures in respect of issuers' modified auditors' opinions into the Listing Rules? Please provide reasons for your views.

Question 19. Yes. No concerns were raised about this matter.

Question 20	Do you agree with our proposal to clarify our expectation of the provision of monthly updates in CP D.1.2 and the note thereto? Please provide reasons for your views.

Question 20. Yes. No concerns were raised about this matter.

Question 21	Do you agree with our proposal to align requirements for the nomination committee, the audit committee and the remuneration committee on establishing written terms of reference for the committee and the arrangements during temporary deviations from requirements as set out in draft Main Board Listing Rules 3.23, 3.27, 3.27B, 3.27C and 8A.28A in Appendix I? Please provide reasons for your views.

Question 21. Yes. No concerns were raised about this matter.

Question 22	Do you agree with the proposed implementation date of financial years commencing on or after 1 January 2025, with transitional arrangements as set out in paragraphs 182 to 183 of the Consultation Paper? Please provide reasons for your views.

Question 22. Yes. No concerns were raised about this matter.

If there are any questions, please feel free to reach out to [redacted]

[redacted] at [redacted] or [redacted].

Yours sincerely,

For and on behalf of
The Hong Kong Chartered Governance Institute

[redacted]