BY EMAIL (response@hkex.com.hk)

12 August 2024

Hong Kong Exchanges and Clearing Limited
12/F, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Dear Sirs,

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

We refer to the Consultation Paper on Review of Corporate Governance Code and Related Listing Rules published by the Hong Kong Exchanges and Clearing Limited ("**HKEX**") in June 2024 ("**Consultation Paper**"). Definitions used in the Consultation Paper shall have the same meanings when used in this letter.

Purpose of submission

We welcome in principle HKEX's proposals with regards to strengthening corporate governance practices amongst Hong Kong listed issuers. The purpose of this submission is to express our views and concerns over certain proposals in the Consultation Paper.

Hard cap on the tenure of Long Serving INEDs

The Consultation Paper proposes to introduce a hard cap of nine years on the tenure of INEDs, beyond which an INED will no longer be considered independent.

The Consultation Paper discussed that continued objectivity and independence are more likely to be questioned given an INED's familiarity with the issuer's management. However, in our opinion, shareholders should be allowed to elect INEDs based on merit. Arbitrarily imposing a restriction to the suitability of an INED purely by reference to tenure would not be appropriate. Conversely, having long-serving INEDs could have the following benefits:

- **Institutional knowledge and experience of an INED** – Long Serving INEDs have deep knowledge of an issuer, its industry, history and operations. The accumulated experience of an INED can provide invaluable guidance on complex matters put before the board of directors, and helps preserve important institutional knowledge for future challenges. An individual's tenure on an issuer's board of directors should not be conclusive with regards to the suitability or independence of an INED.

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- **Enhanced board effectiveness** – Contrary to the view that a longer tenure may impair the independence of an INED, Long Serving INEDs may have more confidence and authority to challenge management effectively. Moreover, INEDs who have worked together for an extended period of time may function more effectively as a whole with enhanced communication, trust and oversight.

- **Continuity and stability** – Long Serving INEDs help ensure consistency in oversight and decision-making on the board.

- **Access to talent** – Having regard to the particular industry of an issuer and the valuable institutional knowledge accumulated by the INEDs, it could be challenging to find qualified individuals in replacement of existing INEDs, particularly in competitive industries or markets. Imposing a hard cap may limit the pool of suitable and competent candidates for issuers.

- **Alignment with long-term interests of shareholders** – Long Serving INEDs may be better aligned with long-term interests of shareholders, as opposed to potential short-term influences by management and/or other internal stakeholders.

The factors set forth above would, in our view, outweigh the concerns and recommendations of institutional investors relating to Long Serving INEDs and each INED should merit consideration on a case-by-case basis.

In addition, there appears to be no evidence or disciplinary finding to support that Long Serving INEDs are failing to properly discharge their duties as independent directors on the board or becoming biased towards the major shareholders of an issuer. Directors are subject to a wide range of laws, rules, regulations and guidance in performing their functions and exercising their powers, and their actions are open to scrutiny. A director who fails to comply with his or her duties in violation of the interests of shareholders can be liable to civil or criminal proceedings and can be disqualified from acting as a director.

We consider i) the existing requirement for the further appointment of a Long Serving INED to be subject to a separate shareholders' resolution (with the reasons why the director is still considered independent and should be re-elected) under Code Provision B.2.3 of the CG Code (as it would be in the interests of shareholders for them to decide whether a candidate has served too long in each case) and ii) the proposal in the Consultation Paper for an issuer to continuously disclose the length of tenure and period of appointment of each director in the CG Report, would strike the right balance. For the reasons set forth above, having a hard cap of nine years on the tenure of INEDs would not be in the best interests of the issuer and its shareholders.

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Training for directors

The Consultation Paper proposes to specify the topics that must be covered for continuous professional development to be received by all directors each year. The specified topics include, as a minimum, (i) the roles, functions and responsibilities of the board, its committees and its directors, and board effectiveness; (ii) issuers' obligations and directors' duties under Hong Kong law and the Listing Rules, and key legal and regulatory developments (including Listing Rule updates) relevant to the discharge of such obligations and duties; (iii) CG and ESG matters (including developments on sustainability or climate-related risks and opportunities relevant to the issuer and its business); (iv) risk management and internal controls; (v) updates on industry-specific developments, business trends and strategies relevant to the issuer.

In addition, the Consultation Paper also proposes to require First-time Directors to complete a minimum of 24 hours of training within 18 months following their appointment, in addition to a general induction training they shall receive upon their initial appointment.

In our view, introducing the above compulsory requirements would neither be most effective nor be in the best interests of the issuer. In particular:

- **Undermining board flexibility and autonomy** – The board of an issuer should have the flexibility to identify and dynamically address their own training requirements. Mandating specific training topics may be an unnecessary intervention into the autonomy of a board and its ability to determine its own internal development needs, rendering the annual professional development a mere box-ticking exercise.

- **Limited effectiveness and efficiency –** Requiring all directors to receive the same training, regardless of their individual needs, backgrounds, experience and the particular needs of an issuer may not be an efficient approach. Mandating training topics that are not tailored to the specific needs of the issuer and its board may not enable directors to develop and refresh their skills in the most efficient manner.

- **Discouraging access to talent –** Imposing onerous compulsory training requirements may discourage potential directors from joining Hong Kong listed issuer boards, particularly for First-time Directors. Mandatory training programs also impose additional time and costs and may result in increased difficulty in attracting and/or retaining qualified individuals.

Whilst we agree that continuous training for directors to develop and refresh their skills and stay informed and relevant are imperative to enhancing board effectiveness as a whole, we do not agree with the proposals categorically (i) mandating the specific topics of training that must be received by all directors each year and (ii) specifying a minimum number of hours of training to be received by First-time Directors with a certain time period.

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Designation of a Lead INED

We do not agree to the Exchange's proposal to introduce a new CP to require issuers without an independent board chair to designate one INED as a "Lead INED". Contrary to the intended goal of improving board effectiveness, introducing a Lead INED adds an additional layer of complexity to the board structure, which may not be necessary or beneficial to an issuer. Specifically:

- **Confusion over roles and responsibilities** – Having a Lead INED could obscure the lines between the roles and responsibilities of the board chair, the chief executive and the broader board. That could also overlap with existing investor relations channels or shareholders communication policy issuers already have in place, leading to confusion and inefficiencies.

- **Misconception of the role of a Lead INED** – Having a Lead INED would present a wrong impression that he or she represents the board or that he or she assumes superior authority within the board, thereby undermining the authority of the board chair and/or the chief executive. This could potentially create tension among the INEDs, disrupt the proper functioning of the board and furnish a misleading message to shareholders.

- **Lack of alignment** –The board should work as a cohesive team, with same directors having the same directors' duties and being jointly and severally responsible for the board's actions. Designating the Lead INED to act "as a sounding board for the chair and as an intermediary between directors and shareholders" could lead to a lack of alignment and cohesion in the board's decision-making process and the expression of its views.

- **Suitability** – A Lead INED, not being involved in the day-to-day operations of the business, would not be best placed to respond to any questions from potential or existing shareholders relating to the issuer's business and operations.

If you require any additional information or have any questions, please do not hesitate to the undersigned on [redacted].

Yours faithfully,

For and on behalf of
Melco International Development Limited

[redacted]