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19 August 2024

Dear Sirs

Consultation Paper on Review of Corporate Governance Code

Introduction

We refer to the Consultation Paper on **Review of Corporate Governance Code** (the "**Consultation Paper**") issued by the Hong Kong Exchange (the "**HKEX**") on 14 June 2024. Unless otherwise defined, terms used in this letter shall have the meaning ascribed to them in the Consultation Paper.

We welcome the opportunity to comment on the Consultation Paper. Set out below are our observations / comments on some of the proposals raised in the Consultation Paper.

Designation of Lead INED

HKEX proposes that issuers without an independent board chair will need to designate one INED as a Lead INED. A board chair would not be considered independent if he or she is not an independent director. Where an issuer has an independent board chair, HKEX expects the board chair to fulfil the role of the Lead INED, unless the issuer designates another INED as the Lead INED. The Lead INED's primary responsibility would be to facilitate and strengthen communications among INEDs; between INEDs and the rest of the board; and with shareholders.

Given the comprehensive rules and guidance now in place on board independence, board performance internal controls and investors communications, we have reservations as to the value of providing for an additional role as the Lead INED. Afterall, the benefits of a lead independent director would be contingent upon various factors, such as director's competence, effectiveness on the risk management and internal controls in place and the company's governance maturity. We believe good corporate governance should be the collective responsibility of all directors, INED or otherwise. For example, in terms of enhancing communications with investors, we believe that the INEDs should discuss and coordinate among themselves as to how to better enhance communications with minority shareholders or respond to any request/question from minority shareholders. On the grand scheme of things, we believe compliance with the existing corporate governance regulations should be sufficient to guarantee for the integrity and good governance of listed issuers in Hong Kong.

Mandatory director training

HKEX has proposed that for First-time Directors are required to complete 24 hours of training within 18 months of the date of their appointment, in addition to the general induction training provided by an issuer to newly appointed directors.

We welcome the HKEX's proposals to ensure continuous professional development for directors. However, we have reservations as to the requirements of 24 hours of training within 18 months being onerous and impractical. Instead, 12 hours of training within the said period should be imposed, which is more practical, achievable and would still ensure directors having adequate training to prepare them for the role. It is noted that for example, lawyers in Hong Kong requires 15 hours of continuous training each year, accountants require 20 hours while SFC licensed representatives require 10 hours.

Board performance review

HKEX has proposed to upgrade the current RBP to a CP to require issuers, on a "comply or explain" basis, to conduct a board performance review at least every two years. Issuers would have discretion to determine the format of such review, including whether the review is conducted internally or through external providers.

We welcome this proposal, as this will align the Hong Kong market with the standards set by its counterparts eg the UK, Australia and Singapore, where issuers are required to conduct board performance reviews and disclose the process on a "comply or explain" basis in their annual reports.

Board skills matrix

HKEX has proposed to maintain a board skills matrix which discloses information, among others, on the existing skills mix of the board, in addition to listing out the directors' qualifications and experience.

While we appreciate the rationale for the proposal, however, setting out skills matrix and whether directors directly fit into each category is a highly subjective and arbitrary exercise. Directors are meant to have different skill sets with different background and experience, such that the board, taken as a whole, will have the benefit of all of their skill sets and experience to serve the shareholders and the issuers.

Overboarding INED

A hard cap has been proposed on overboarding ie an INED must not concurrently hold more than six listed issuer directorships. In the Consultation Paper, HKEX has cited two counterpart jurisdictions where overboarding is regulated: (a) Mainland China, which has imposed a cap of three concurrent INED directorships that an individual can hold; and (b) the UK, where the UK CG Code provides that full-time executive directors should not take on more than one non-executive director role in a FTSE 100 company or other significant commitments.

We appreciate the rationale for imposing a hard cap on overboarding INED. We also welcome the proposed 3-year transition period ie the hard cap will apply from 1 January 2028 onwards, which would help issuers to get themselves ready for compliance.

Independence of INEDs after nine years

At present, the LR sets no limit on the tenure of INEDs. The CG Code requires any further appointment of a "Long Serving INED" (ie INED who has served for more than 9 years on the board of a listed issuer) to be subject to a separate shareholders' resolution, which states the reasons why the board (or the nomination committee) believes that the director is still independent and should be re-elected.

HKEX now proposes to impose a hard cap on the tenure of Long Serving INEDs, subject to a 3-year transition period. A Long serving INEDs will be allowed to serve again as an INED on the board of the same issuer upon completion of a 2-year cooling-off period.

Whilst regulators in the UK and Australia recognize in their corporate governance codes that a director's lengthy tenure on the board could impair (or appear to impair) their independence, no hard cap has seen imposed on INED independence.

We have reservation on the proposed hard cap, as this is not prevalent in other securities market. We believe the current arrangement is sufficient to address market concerns in respect of actual and/or perceived independence, as shareholders will be voting on re-appointment of Long Serving INED separately. Since the proposed shareholder resolution will provide reasons why the board believe the director in question is still independent and should be re-elected, we believe the shareholders should be able to make an informed decision under current arrangement.

Should the HKEX wish to discuss any of our comments please do not hesitate to contact our [redacted] on [redacted] or [redacted].

Yours faithfully [redacted]

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