



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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15 October 2024

The Hon Paul Chan, GBM, GBS, MH, JP
Financial Secretary
25/F Central Government Offices
2 Tim Mei Avenue
Tamar Hong Kong

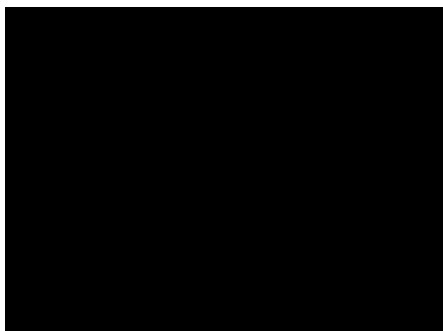
Dear Paul,

**HKEX Consultation on
Review of Corporate Governance Code and Relating Listing Rules
- Proposal on Independent Non-executive Directors ("INEDs")**

We refer to this Consultation and the letter of 8 October (attached) addressed to your good self by The Chamber of Hong Kong Listed Companies ("CHKLC"), in which serious concerns were raised on the proposed 9-year cap to be imposed on the tenure of Independent Non-executive Directors.

We share the same concerns with the CHKLC and find it necessary to write to you to register our support to the views expressed in their letter. We believe that the existing Rules governing the tenure of INEDs have been functioning well and the status quo should be maintained.

Yours sincerely,



cc HKEX
CHKLC



香港上市公司商會
THE CHAMBER OF HONG KONG LISTED COMPANIES

8 October 2024

The Honourable CHAN Mo Po, Paul, GBM, GBS, MH, JP
Financial Secretary

The Government of the Hong Kong Special Administrative Region
25/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Financial Secretary

Re: HKEX Proposals on Independent Non-executive Directors

We are a group of listed companies sitting on the General Committee of the Chamber of Hong Kong Listed Companies (“CHKLC”). We are writing with regard to the Hong Kong Stock Exchange (“HKEX”) consultation on “*Review of Corporate Governance Code and Related Listing Rules*” in which a number of rule changes concerning the appointment of Independent Non-executive Directors (“INEDs”) of listed issuers are proposed.

CHKLC has written to HKEX in response to the consultation, pointing out the unreasonableness of the proposed changes and stating our objections, in particular the capping of INED’s tenure at nine years (the “**nine-year rule**”). As far as we are aware, our views are shared by many other industry associations and market practitioners. Unfortunately, from our discussions with HKEX, despite the overwhelming opposition of listed issuers to the proposed changes, HKEX appears to be quite determined to implement the changes with only a slight relaxation in timing. If that is the case, we fear that it would negatively affect companies listed in Hong Kong, depriving them of the right to nominate the best director candidates, thus adversely affecting their businesses and the attractiveness of Hong Kong for companies seeking to list their shares in a major international financial centre.

Under the current listing rules (Code Provision B.2.3), listed issuers must disclose the reasons why an INED with more than nine years’ tenure is considered to be independent



in the papers to shareholders accompanying the re-election resolution. This should provide sufficient transparency to all shareholders. Many issuers, local and mainland companies alike, retain their INEDs for consecutive years because they bring true value to the business due to their knowledge, experience and high calibre. There is a very limited pool of eligible and available candidates with the necessary qualifications and experience for appointment as INEDs. Replacing the existing long-serving INEDs is not easy. We strongly disagree with the proposed mandatory termination of their services to the company by way of an arbitrary rule, in particular when the market opinions we have come to gather are in overwhelming opposition to it. The allegation that directors who serve more than 9 years would lose independence and act in a partial way is unfounded and not in any way supported by evidence. Directors are fully aware of their fiduciary duty and duties of skill, care and diligence for the best interests of the company and would face legal liabilities if they fail to do so.

Some have suggested the nine-year rule is to raise Hong Kong's corporate governance to the international level so as to maintain the city's position as an international financial centre. However, good corporate governance is multi-faceted and INEDs' tenure is by no means the determining one. Besides, in many jurisdictions and advanced markets, such as the UK and Australia, there is no mandatory maximum INED tenure. Similarly, some companies in Japan also have recently called on the Japanese Government to ease the guidelines on outside directors, stating that there are not many suitable candidates. If the HKEX proposal is adopted, Hong Kong would be the most restrictive in this respect and that may deter companies from coming to Hong Kong for listing. The proposal does nothing to enhance Hong Kong's position as an international financial centre and will be a setback to the current drive to boost IPO activities.

There is further suggestion that if a listed issuer wishes to appoint INEDs who have served over 9 years, only minority shareholders are allowed to vote. This is a very dangerous proposition. It assumes that the interests of the majority and minority shareholders are necessarily opposed to each other, which is not true. The proposition, if implemented, will polarize the board should directors supported by shareholder activists get elected. That will cause huge disruption to the functioning of the board and business activities. Such a suggestion could set a precedent for a proposition that eventually all INEDS would be elected only by minority shareholders, as had been suggested by HKEX before. That will be a totally unjustified and unacceptable disenfranchisement of the majority



shareholders, who are the major capital contributors of the company. The possibility of having activist INEDs on the board is particularly sensitive to mainland companies, including State-owned enterprises, and that might turn them away from listing in Hong Kong.

In our view, any rule change should aim to fix a specific problem, enhance board performance and efficiency, and ultimately raise shareholder value. However, the proposed changes concerning INED appointment are unclear and misguided in their objective and do not bring apparent benefits. Hong Kong is going through tough economic times and many companies are struggling. Implementing the changes would only distract companies from growing their business and will bring more harm than good to the economy.

We sincerely ask for your attention in this matter and hope you can provide guidance to lead it to a satisfactory outcome for Hong Kong. If your schedule permits, we would like to seek a meeting with you and your team to discuss the matter in detail.

Yours sincerely,



**Great Eagle Holdings Ltd.
Champion Reit
Langham Hospitality Trust Investment Ltd.**



Sun Hung Kai Properties Ltd.



Henderson Land Development Co., Ltd.



**The Hong Kong and China Gas Company Ltd.
Towngas Smart Energy Company Ltd.**



Quam Plus International Financial Ltd.



Emperor Capital Group Ltd.



**Bosideng International Holdings Ltd.
Powerlong Real Estate Holdings Ltd.**



Century Legend (Holdings) Ltd.



The Bank of East Asia, Ltd.



Da Yu Financial Holdings Limited



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THE CHAMBER OF HONG KONG LISTED COMPANIES



Tai Hing Group Holdings Ltd.



China Gas Holdings Ltd.



Beijing Enterprises Water Group Ltd.



Minshang Creative Technology Holdings Ltd.



ISP Holdings Ltd.