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特許秘書

The Hong Kong Institute of Chartered Secretaries

Submission:

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

4 December 2017

By Email Only: response@hkex.com.hk

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Dear Sirs

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

About HKICS

The Hong Kong Institute of Chartered Secretaries (HKICS) is an independent professional institute representing Chartered Secretaries as governance professionals in Hong Kong and Mainland China with over 5,800 members and 3,200 students. HKICS originates from The Institute of Chartered Secretaries and Administrators (ICSA) in the United Kingdom with 9 divisions and over 30,000 members and 10,000 students internationally. HKICS is also a Founder Member of Corporate Secretaries International Association (CSIA), an international organisation comprising 14 national member organisations to promote good governance globally.

HKICS Supports HKEX's Proposals

HKICS supports, in general, the HKEX's proposals (**Proposals**) contained under the Consultation Paper on Review Of The Corporate Governance Code And Related Listing Rules (**Consultation Paper**). The general support is on the basis that the Proposals are conducive to good governance and Hong Kong's market development.

Part I: Independent Non-Executive Directors

Overboarding and INED's time commitment

1. Do you agree with our proposed amendment to Code Provision ("CP") A.5.5 (on a "comply or explain" basis) so that in addition to the CP's current requirements, the board should also explain, if the proposed independent non-executive director ("INED") will be holding his seventh (or more) listed company directorship, why he would still be able to devote sufficient time to the board?

We agree with the proposal which is in line with international developments on this topic. Hong Kong should adopt emerging good practice which this proposal is consistent with. We add that where the INED served on various members within a listed issuer's group of listed companies, these should collectively be regarded as one directorship. We submit that this matter should be clarified.

Board diversity

2. Do you agree with our proposals to upgrade CP A.5.6 (on a "comply or explain" basis) to a Rule (Rule 13.92) requiring issuers to have a diversity policy and to disclose the policy or a summary of it in their corporate governance reports?

We agree with the proposal. We submit that this issue could be covered under the corporate governance report by reference to the diversity policy on the issuer's website.

3. Do you agree with our proposal to amend CP A.5.5 that it requires (on a "comply or explain" basis) the board to state in the circular to shareholders accompanying the resolution to elect the director: (i) the process used for identifying the nominee; (ii) the perspectives, skills and experience that the person is expected to bring to the board; and (iii) how the nominee would contribute to the diversity of the board.

We agree with the proposals.

4. Do you agree with our proposal to amend Mandatory Disclosure Requirement L.(d)(ii) to reflect the upgrade of CP A.5.6 (on a "comply or explain" basis) to a Rule (Rule 13.92) requiring issuers to have a diversity policy and to disclose the policy or a summary of it in their Corporate Governance Reports?

We agree with the proposal. We submit that this issue could be covered under the corporate governance report by reference to the diversity policy on the issuer's website.

Factors affecting INED's independence

A. Cooling off periods for former professional advisers

5. Do you agree with our proposal to revise Rule 3.13 (3) so that there is a three-year cooling off period for professional advisers before they can be considered independent, instead of the current one year?

We have different Member views, with those agreeing with the proposal, and those that do not. This is on the basis that the professional adviser could have been engaged in a single appointment, and be subject to extended cooling-off period. It may well be that there should be some consideration of whether the professional capacity was significant to the proposed candidate concerned. We defer to market consensus, if any. For completeness, the minority Member view is that 18 months would be a balanced period to consider to be adopted. Please consider.

6. Do you agree with our proposal to revise CP C.3.2 (on a "comply or explain" basis) so that there is a three-year cooling off period for a former partner of the issuer's existing audit firm before he can be a member of the issuer's audit committee?

We agree with the proposal. For completeness, the minority Member view is that 18 months would be a balanced period to consider to be adopted. Please consider.

B. Cooling off period in respect of material interests in business activities

7. Do you agree with our proposal to revise Rule 3.13(4) to introduce a one-year cooling off period for a proposed INED who has had material interests in the issuer's principal business activities in the past year?

We agree with the proposal.

C. Cross-directorships or Significant Links with other Directors

8. Do you agree with our proposal to introduce a new Recommended Best Practice A.3.3 (i.e. voluntary) to recommend disclosure of INEDs' cross-directorships in the Corporate Governance Report?

We agree with the proposal.

D. Family ties

9. Do you agree with our proposal to introduce a Note under Rule 3.13 to encourage inclusion of an INED's immediate family members in the assessment of the director's independence?

We agree with the proposal.

10. Do you agree with our proposal to adopt the same definition for "immediate family member" as Rule 14A.12(1)(a) which defines an "immediate family member" as "his spouse, his (or his spouse's) child or step-child, natural or adopted, under the age of 18 years"?

We agree with the proposal.

Part II: Nomination Policy

11. Do you agree with our proposal to amend Mandatory Disclosure Requirement L.(d)(ii) of Appendix 14 to require an issuer to disclose its nomination policy adopted during the year?

We agree with the proposal. We submit that this issue could be covered under the corporate governance report by reference to the nomination policy on the issuer's website.

Part III: Directors' Attendance At Meetings

Directors' attendance at general meetings

12. Do you agree with our proposal to amend CP A.6.7 (on a "comply or explain" basis) by removing the last sentence of the current wording (i.e. they should also attend general meetings and develop a balanced understanding of the views of shareholders.)?

We agree with the proposal.

Chairman's annual meetings with INEDs

13. Do you agree with our proposal to revise CP A.2.7 (on a "comply or explain" basis) to state that INEDs should meet at least annually with the chairman?

We agree with the proposal.

Part IV: Dividend Policy

14. Do you agree with our proposal to introduce CP E.1.5 requiring (on a "comply or explain" basis) the issuer to disclose its dividend policy in the annual report?

We agree with the proposal. In the event that there are proposed changes to the disclosure requirements as to the dividend policy, its related guidance and/or scope, listed companies should be consulted thereon.

Part V: Electronic Dissemination Of Corporate Communications – Implied Consent

15. Do you think that the Rules should be amended to allow shareholders' consent to be implied for electronic dissemination of corporate communications by issuers?

We agree with the proposal. We believe that HKEX should continue to explore ways to reduce the administrative burden upon listed issuers, and the use of technology for the market development of Hong Kong. For completeness, the minority Member view is that there may be shareholders that do not know how to use online tools to check information and paper may still be required in order not to deprive shareholders' rights.

Should you have any questions, please feel free to contact Samantha Suen FCIS FCS(PE), Chief Executive, HKICS or Mohan Datwani FCIS FCS(PE), Senior Director, and Head of Technical and Research, HKICS at

Yours faithfully,

Ivan Tam FCIS FCS

President

The Hong Kong Institute of Chartered Secretaries