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18 June 2021

Hong Kong Exchanges and Clearing Limited  
Exchange Square  
8 Connaught Place, Central  
Hong Kong

Via submission link: [https://hkex.sydney.qualtrics.com/jfe/form/SV\\_0uYXDSX7rZolCns](https://hkex.sydney.qualtrics.com/jfe/form/SV_0uYXDSX7rZolCns)

Dear Sir / Madam,

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

As one of the largest professional accounting bodies in the world, CPA Australia represents the diverse interests of more than 168,000 members working in 100 countries and regions around the world, including over 15,000 members in Hong Kong. We make this submission on behalf of our members and in the broader public interest.

Please find enclosed our responses to the questions raised in the consultation paper. In preparing this submission, we sought the advice of our member experts in Hong Kong. We are generally supportive of the proposals outlined in the Consultation Paper, but offer several suggestions for further consideration by the Hong Kong Exchanges and Clearing Limited.

If you have any queries, please do not hesitate to contact Dr John Purcell, Policy Adviser – ESG at CPA Australia on [john.purcell@cpaaustralia.com.au](mailto:john.purcell@cpaaustralia.com.au).

Yours sincerely

**Deborah Leung FCPA (Aust.)**  
Executive General Manager, International

**Dr Gary Pflugrath CPA (Aust.)**  
Executive General Manager, Policy and Advocacy

Encl.

**Question 1 Do you agree with our proposal to introduce a CP requiring an issuer's board to set culture in alignment with issuer's purpose, value and strategy?**

We agree with the proposal. It is important for setting appropriate culture in alignment with an issuer's purpose, value and strategy. A company's culture, which is collective of values and beliefs, is critical in shaping the attitude and conducts of its employees. The board should understand and define culture and communicate that to the public. The Hong Kong Exchanges and Clearing Limited (HKEx) may be aware that in the development of the 4<sup>th</sup> edition of the Australian Stock Exchange (ASX) [Corporate Governance Principles & Recommendations](#) there was significant debate around inclusion of reference to 'social license to operate'. Although not adopted in the final Principles & Recommendations, this is indicative of global trends in expectations placed upon companies beyond that of generating financial returns. The proposals addressed in this question are thus consistent with wider international trends such as the [Council for Inclusive Capitalism](#). One matter we urge consideration of is possible direct reference to 'a culture of acting lawfully'.

**Question 2 Do you agree with our proposal to:**

- (a) introduce a CP requiring establishment of an anti-corruption policy; and**
- (b) upgrade a RBP to CP requiring establishment of a whistleblowing policy?**

We agree with the proposals and suggest issuers elaborate on the effectiveness of their whistleblowing and anti-corruption policies, including reference to internal training, particularly in vulnerable areas of operations such as FDI and appointment of agents. We further recommend the HKEx considers requiring issuers to disclose the outcomes of these policies measured with appropriate metrics.

**Question 3 Do you agree with our proposal to introduce a CP requiring disclosure of a policy to ensure independent views and input are available to the board, and an annual review of the implementation and effectiveness of such policy?**

We believe mere disclosure of a policy is insufficient. What is important is to have the board discuss the independent views and inputs. We thus ask the HKEx to consider requiring a regular board evaluation, including external evaluation by third parties, as a CP. Currently this is only a recommended best practice (RBP).

**Question 4(a) Do you agree with our proposal regarding re-election of Long Serving INEDs to revise an existing CP to require (i) independent shareholders' approval; and (ii) Additional Disclosure?**

We believe it is sound practice to require independent shareholders' approval for the re-election of all long serving independent non-executive directors along with the company's disclosure of the factors considered for their re-election, as well as the relationship between the independent shareholders and the re-elected Long Serving INEDs.

**Question 4(b) Do you agree with our proposal to introduce a CP requiring an issuer to appoint a new INED at the forthcoming AGM where all the INEDs on the board are Long Serving INEDs, and disclosing the length of tenure of the Long Serving INEDs on the board on a named basis in the shareholders' circular?**

We agree with the proposed new CP that requires appointment of a new independent non-executive director at the forthcoming AGM where all the independent non-executive directors are long serving. We also suggest the HKEx:

- i) requires mandatory disclosure of the length of tenure of all independent non-executive directors on the board on a named basis. This information helps investors to evaluate the independence and of board members and how often board members are replaced; and
- ii) requires the appointment of a lead / senior independent director where the chairman is not independent.

**Question 5 Do you agree with our proposal to introduce a new RBP that an issuer generally should not grant equity-based remuneration (e.g. share options or grants) with performance-related elements to INEDs as this may lead to bias in their decision-making and compromise their objectivity and independence?**

Agree with the proposal.

**Question 6(a) Do you agree with our proposal to highlight that diversity is not considered to be achieved by a single gender board in the note of the Rule?**

Agree with the proposal.

**Question 6(b) Do you agree with our proposal to introduce a MDR requiring all listed issuers to set and disclose numerical targets and timelines for achieving gender diversity at both: (a) board level; and (b) across the workforce (including senior management)?**

Agree with the proposal. This brings the HKEx to be more aligned with other jurisdictions' stock exchanges which have requirements for companies to implement policies to require appointment of female directors. The recommendation is likewise sound in its reference to senior management and diversity across the whole of workforce.

**Question 6(c) Do you agree with our proposal to introduce a CP requiring the board to review the implementation and effectiveness of its board diversity policy annually?**

Agree with the proposal to which it is important that there be measurable objectives and agreed milestones for achieving gender diversity.

**Question 6(d) Do you agree with our proposal to amend the relevant forms to include directors' gender information?**

Agree with the proposal.

**Question 7 Do you agree with our proposal to upgrade a CP to Rule requiring issuers to establish a NC chaired by an INED and comprising a majority of INEDs?**

Agree with the proposal. Other Asian markets have a similar arrangement. Consideration might also be given to recommending that the nomination committee have, and disclose, a charter outlining its processes.

**Question 8 Do you agree with our proposal to upgrade a CP to a MDR to require disclosure of the issuer's shareholders communication policy (which includes channels for shareholders to communicate their views on various matters affecting issuers, as well as steps taken to solicit and understand the views of shareholders and stakeholders) and annual review of such policy to ensure its effectiveness?**

This is a good step, but we believe more is needed to be done to recognise the legitimate need to inform shareholders on matters affecting their interests and in the execution of both their statutory and proprietary rights. We recommend that the HKEx requires issuers to disclose actions taken, or to be taken, following the annual review of the policy. This would ensure issuers "walk their talk." Moreover, the communication policy should include the engagement of ESG, diversity and inclusiveness topics with investors.

**Question 9 Do you agree with our proposal to introduce a Rule requiring disclosure of directors' attendance in the poll results announcements?**

Agree with the proposal. More importantly, we suggest the HKEx looks into the issue of over-boarding of directors, which is not uncommon amongst Hong Kong-listed companies. Attendance should not be singled out as the only major metric for assessing directors' performance to which we suggest greater focus be given to having and disclosing processes for periodic evaluation of the performance of the board, its committees and individual directors.

**Question 10 Do you agree with our proposal to delete the CP that requires issuers to appoint NEDs for a specific term?**

No comments.

**Question 11 Do you agree with our proposal to elaborate the linkage in the Code by (a) setting out the relationship between CG and ESG in the introductory section; and (b) including ESG risks in the context of risk management under the Code?**

Agree with the proposal. The articulation of approaches to identifying and managing environmental and social risks is consistent with global trends amongst investors calling for greater transparency on these matters. Also, it is consistent with trends in sustainability reporting. Moreover, with respect to the Consultation Paper's reference to shifts towards mandatory TCFD-aligned climate-related disclosures, this proposal should provide a pathway towards this eventuality.

**Question 12 Do you agree with our proposal to amend the Rules and the ESG Guide to require publication of ESG reports at the same time as publication of annual reports?**

We agree with this proposal as an important measure enabling a more holistic presentation and understanding of the company's performance, position and prospects. Moreover, the strong likelihood of the establishment of a formal structure under the umbrella of the IFRS Foundation, vested with powers to promulgate international sustainability standards, signifies the mainstreaming of environmental and social disclosures. Consistency and coherence across ESG and annual reports is thus vital.

**Question 13 Do you have any comments on how the re-arranged Code is drafted in the form set out in Appendices III and IV to this paper and whether it will give rise to any ambiguities or unintended consequences?**

No comments.

**Question 14 In addition to the topics mentioned in this paper, do you have any comments regarding what to be included in the CG GL which may be helpful to issuers for achieving the Principles set out in the Code?**

The proposals certainly help to uplift the corporate governance requirements of the HKEx, but bolder moves should be considered. We suggest the following actions be considered:

- 1) upgrade the board evaluation from best practice to a code provision
- 2) add a new requirement to request disclosure of tenure on a named basis for all independent directors
- 3) require issuers to appoint a lead independent director where the chair of the board is not independent
- 4) add a new mandatory requirement for disclosure of actions taken, or to be taken, upon annual review of a shareholder communication policy.

**Question 15. Do you agree with our proposed implementation dates of:**

- (a) for all proposals (except the proposals on Long Serving INED): financial year commencing on or after 1 January 2022; and**  
**(b) for proposals on Long Serving INED: financial year commencing on or after 1 January 2023?**

Agree with both proposals.