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## QUESTIONNAIRE ON CONSULTATION PAPER ON REVIEW OF THE CORPORATE GOVERNANCE CODE AND RELATED LISTING RULES

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We invite interested parties to respond to the Consultation Paper on Review of the Corporate Governance Code and Related Listing Rules (**Consultation Paper**), downloadable from the HKEX website at:

<https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp20171111.pdf>.

This Questionnaire contains the Privacy Policy Statement; Part A: General Information of the Respondent; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEX both Part A and Part B of this Questionnaire no later than **8 December 2017** by one of the following methods:

By mail or  
hand delivery to

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

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

By fax to

(852) 2524-0149

By e-mail to

[response@hkex.com.hk](mailto:response@hkex.com.hk)

Please mark in the subject line:

**“Re: Consultation Paper on CG Review”**

Our submission enquiry number is (852) 2840-3844.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

## Privacy Policy Statement

Hong Kong Exchanges and Clearing Limited and from time to time, its subsidiaries, affiliated companies controlling it or under common control with it and its joint ventures (each such entity, from time to time, being “**HKEX**”, “**we**”, “**us**” or an “**affiliate**” for the purposes of this Privacy Policy Statement as appropriate) recognises its responsibilities in relation to the collection, holding, processing, use and/ or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by HKEX is accurate. HKEX will use your personal data in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, as required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website, continued use by you of the HKEX website shall be deemed to be your acceptance of and consent to this Privacy Policy Statement.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels below.

HKEX will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your request.

### Purpose

From time to time we may collect your personal data such as your name, mailing address, telephone number, email address and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

## **Direct marketing**

Except to the extent you have already opted out or in future opt out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to our financial services and information services, and related financial services and information services offered by our affiliates.

If you do not wish to receive any promotional and direct marketing materials from HKEX or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels below.

## **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

## **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out or in future opt out, we may transfer your name, mailing address, telephone number and email address to our affiliates for the purpose of enabling our affiliates to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

## **Other transfers of personal data**

For one or more of the purposes specified above, the personal data may be:

1. transferred to our affiliates and made available to appropriate persons in our affiliates, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong; and
2. supplied to any agent, contractor or third party who provides administrative or other services to HKEX and/ or any of our affiliates in Hong Kong or elsewhere.

## How we use cookies

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

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The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

## Compliance with laws and regulations

You agree that HKEX and its affiliates may be required to retain, process and/ or disclose your personal data in order to comply with applicable laws and regulations, or in order to comply with a court order, subpoena or other legal process, or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere). You also agree that HKEX and its affiliates may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our affiliates and employees.

## Corporate reorganisation

As HKEX continues to develop its business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

## **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether HKEX holds your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request HKEX to inform you of the type of personal data held by it. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner.

Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEX should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEX's administrative and actual costs incurred in complying with your data access requests.

## **Termination or cancellation**

Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

## **Contact us**

By Post:  
Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
12/F., One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

By Email:  
[pdpo@hkex.com.hk](mailto:pdpo@hkex.com.hk)

## Part A General Information of the Respondent

- (1) Please state whether your response represents your personal or your company/entity's view by checking (☒) the boxes below and filling in the information as appropriate:

☐ Company/Entity view

|                       |  |                |                     |  |
|-----------------------|--|----------------|---------------------|--|
| Company/Entity name*: | The Chamber of Hong Kong Listed Companies  |                |                     |  |
| Company/Entity type*: | <i>HKEX Participant</i> :- <input type="checkbox"/> SEHK <input type="checkbox"/> HKFE<br><input type="checkbox"/> HKSCC <input type="checkbox"/> SEOCH <input type="checkbox"/> HKCC<br><input type="checkbox"/> Listed company <input checked="" type="checkbox"/> Professional body / Industry association<br><input type="checkbox"/> Market practitioner (Type: _____ )<br><input type="checkbox"/> None of the above |                |                     |  |
| Contact person*:      | Mr   | Mike Wong      |                     |  |
| Title:                | Chief Executive Officer  |                |                     |  |
| Phone no.*:           | 2116 8922  | Email address: | mikewong@chkclc.org |  |

☐ Personal view

|  |   |  |       |
|--|---|--|-------|
| Respondent's full name*:   | Mr/Ms/Mrs _____                                 |  |       |
| Phone no.*:  | _____   | Email address:                           | _____ |
| Among the following, please select the one best describing your position*: |   |  |       |
| <input type="checkbox"/> Listed company staff                              | <input type="checkbox"/> HKEX participant staff | <input type="checkbox"/> Retail investor |       |
| <input type="checkbox"/> Institutional investor                            | <input type="checkbox"/> None of the above      |  |       |

**Important note:** All fields marked with an asterisk (\*) are mandatory. HKEX may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.

(2) Disclosure of identity

HKEX may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should tick the box below:

☐ I/We do not wish to disclose my/our identity to the members of the public.

  
\_\_\_\_\_



Signature (with Company/Entity Chop if the response represents company/entity view)

## Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:

<https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017111.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

### 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?

☐ Yes

☒ No

Please give reasons for your views.

Firstly, we are of the view that whether a director can devote sufficient time to a board does not depend entirely on the number of board seats he holds. A person who is extremely busy on his "day-job", if he/she has one, for example, could still find insufficient time for the board directorship even if it is the only one. In this sense, we do not think it is entirely scientific to pick a number and require the issuers to explain.

Secondly, when selecting a person as a board director, the Nomination Committee must have considered the suitability of that person fully, including the time commitment. Therefore, it is sufficient for the Nomination Committee to confirm their belief in the time commitment of the director proposed and subsequently elected in the announcement or circular appointing such director.

Thirdly, this requirement if implemented does not affect one company (that the director joins as his/her seventh directorship) but also all the other companies that he or she serves, so it would be rather cumbersome.

#### 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?

☒ Yes

☐ No

Please give reasons for your views.

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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.

☐ Yes

☒ No

Please give reasons for your views.

We agree to points (ii) and (iii) but not (i). The reason is that the process of identifying a nominee could be sensitive and the company or the candidate may not wish to disclose it. Besides, what is important here is the quality and contribution of the candidate, how he/she is identified is of lesser importance.

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?

☒ Yes

☐ No

Please give reasons for your views.

## 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?

☐ Yes

☒ No

Please give reasons for your views.

We believe three years is too long and would shrink the pool of available director candidates. That would run counter to the HKEX's other objective of limiting the number of directorship one individual can hold.

Within the definition of "director, partner, principal, or employee" of a professional adviser, there is varying degrees of involvement with the listed entity in question, depending on the capacity of the adviser. To use audit firm as an example, the involvement and the association of an engagement partner would be very different from that of a non engagement partner. To draw the line of 3 years for professional adviser of all capacities is not suitable.

As a counter proposal, we propose a cooling off period of two years. Reference is made to the Code of Ethics for Professional Accountants that is applicable to Hong Kong. Sections 290.137 and 290.139 of the Code suggests a cooling off period of 12 months in similar circumstance. In view of this, if HKEX is to introduce a cooling off period of two years, it would provide a very good balance between keeping professional independence and maintaining a reasonable supply of director candidates.

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?

☐ Yes

☒ No

Please give reasons for your views.

We recommend a cooling off period of two years, as per our answer to Q.5

**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?

☒ Yes

☐ No

Please give reasons for your views.

**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?

☒ Yes

☐ No

Please give reasons for your views.

#### **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?

☒ Yes

☐ No

Please give reasons for your views.

We basically agree but are wary of the situation where for reasons of professional integrity, a spouse's professional undertakings may need to be kept confidential. For example, the spouse of a company's INED may be a partner of a law firm and if the firm receives an engagement from the company, the spouse may not be able to disclose this information to the director out of confidentiality's consideration. We anticipate certain possible practical difficulties in implementing this rule.

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"?

☒ Yes

☐ No

Please give reasons for your views.

#### **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?

☒ Yes

☐ No

Please give reasons for your views.

### **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.)?

☒ Yes

☐ No

Please give reasons for your views.

#### **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?

☒ Yes

☐ No

Please give reasons for your views.

**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?

☒ Yes

☐ No

Please give reasons for your views.

**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?

☒ Yes

☐ No

Please give reasons for your views.

- End -